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AND

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“Δεῖ καὶ τὰς ἄλλας ἐπισκέψασθαι πολιτείας . . . ἵνα τὸ τ’ὀρθῶς ἔχον ὁφθῇ καὶ τὸ
χρήσιμον.”—ARIST. *Pol.* II. I.

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THERE are good reasons for inserting in *The Journal of Comparative Legislation* a portrait of one who has been for many years a zealous and valued supporter of the Society. The understanding and sympathy existing between the United States and this country are due in no small degree to those who have worked in the same spirit as Mr. Newton Crane. Sydney Smith once described himself as a "moral amalgam": his was a peculiar talent, he claimed, for "mixing up human materials in society." And the same might be said of Mr. Newton Crane. As chairman of the American Society, in his official capacity as agent of his Government, and in many public and private functions, he has been the felicitous and tactful interpreter of what is best in both countries. As a member of the Bar of the Supreme Court of the United States, and also of the English Bar, he has been the trusted medium of communication between both. The Society owes to him a debt difficult to repay. Since its foundation he has contributed articles of great value; he has freely put at the disposal of the Society his stores of information; and he has given it, often with great advantage, the benefit of his advice and experience.

THE TEACHING OF ROMAN LAW.¹

I MUST begin with an apology for coming to take up a part of your time at this meeting, where you have so many more important matters to discuss together, in speaking to you, in French and not in English, not of your national law but of Roman Law. But really the blame lies with your Society, which has done me the honour of electing me one of its foreign honorary members, and with your Committee, which has done me the additional honour of inviting me to speak at your meeting to-day. It would have been ungrateful, I feel, to meet with a refusal the first request of friends to whom I was under so many obligations; and as it is a Professor of Roman Law that you have associated with your activities and called to address you, it is natural that he should address you on the subject of Roman Law, for it is by speaking on the subject of which one is least ignorant that one is most likely to say things that are neither very far wrong nor too lacking in interest.

I think, however, it is needless for me to say that nothing is farther from my mind than the misbefitting notion of taking advantage of my presence here among colleagues engaged in all the branches of legal teaching to extol, to the prejudice of the other branches of this teaching, the department in which my own studies lie. A Frenchman ought to be acquainted with the comedy of Molière in which Monsieur Jourdain's visiting masters dispute with each other whether it is fencing or grammar or dancing that is the most excellent of the sciences, and I may add that, when one has been a member of the teaching profession for more than thirty years, as I have been, one has had too many opportunities of witnessing this performance elsewhere than on the stage to feel the least desire to enact it once more.

On the contrary, my first word must be to call your attention to an inferiority, apparent, and even to a certain extent real, that the Roman Law presents to-day, and no doubt will present in all time to come, in comparison with most of the other branches of legal instruction. My first word must be to remind you of events that have undoubtedly taken away from the teaching of Roman Law the grounds on which such teaching

¹ Address delivered at the Annual Meeting of the Society of Public Teachers of Law in the Parliament Chamber of the Honourable Society of the Middle Temple on July 5, 1912, by M. Paul Frédéric Girard, Professor in the University of Paris, Honorary Member of the Society of Public Teachers of Law.

had for centuries rested, and that have consequently raised the question whether there was reason for leaving to it in virtue of new motives the position that it could no longer maintain in virtue of the old motives; and also, if the decision should be in favour of its maintenance, the no less pressing question how far the change that has come over the grounds for teaching it should involve a change in the character of the teaching.

In the course of the last century the Roman Law lost in increasingly numerous areas the authority of law, which it never had in your country, but which it had so long possessed over a part of the world, and which had been the direct motive of the study of it. For new reasons, however—which are good reasons—there has been very general agreement as to the propriety of retaining it as a subject of instruction; but the change of the reasons for teaching it imposes a parallel change in the manner of teaching it. These are the three points that I propose to discuss before you in the few minutes at my disposal.

I.

The nineteenth century—not forgetting the fourteenth—was probably the century when the Roman Law was most actively studied, and with the most brilliant results; but, by one of those paradoxes that the history of science often presents, this was perhaps, of all the centuries of its history, the one that proved the most fatal to its practical application, the one in which it received, in its material import as a living branch of the law positive, as law applicable by the Courts, the most repeated and the most decisive blows. For the science of Roman Law the century opens with the marvellous awakening caused by the discovery of the Institutes of Gaius in the sphere of the sources, and by the work of Savigny and his school in the sphere of their interpretation. It closes in the blaze of the new lights thrown upon the true Roman rules by those discoveries of papyri and those discoveries of interpolations that are still in progress. But it opens in 1804 with the promulgation of the French Code Civil, which definitely replaced those Roman laws that had been, down to the Revolution, in spite of the distinctions of *pays de coutume* and *pays de droit écrit*, the real common law of the whole of France.¹ It closes in 1900 with the coming into operation of the German civil code, which has deprived the Roman Law of the most extensive and the most cultivated field of application that remained to it. And in the intervening period the Roman Law had lost, for example, Austria with the Code of 1811, and Italy with the Code of 1864. Moreover, the movement, in which the British Empire was

¹ See, in opposition to the attempts made to restrict its importance in the *pays de coutume*, for example by Maitland in his brilliant study *The English Law and the Renaissance* (Cambridge, 1901), the sound remarks of M. Esmein, in the *Nouvelle Revue Historique de Droit*, 1902, pp. 776-7.

represented in 1866 by the Canadian Code of the Province of Quebec, has been continued since the beginning of the twentieth century by new codifications, such as the Swiss Civil Code of 1907, completed by the Code of Obligations of 1910.

The final result to-day is that the Roman Law has lost the character of law positive that it had played at a certain period over the most part of Europe, and that it still possessed there, in the main, at least on certain subjects, a little more than a century ago. Henceforth it no longer preserves this character, unless by way of accidental exception in some isolated islets removed by a stroke of chance from the sweep of the rising wave of codification, in territories belonging to Great Britain where the Roman Law of Pothier or of Voet was saved by the Norman or Dutch origins of the existing law, and in the regions of the Russian Empire where the diversities of the local laws left practical scope for the Byzantine law.

This detracts in no way from the glory of the Roman Law, or from the glory of its expositors. It has been said, not without good grounds, that it was the mighty work of the German Pandectists of the nineteenth century that alone rendered possible the codification of the *Bürgerliches Gesetzbuch*, whose long series of articles reflects so clearly the Roman Law as they understood it; and the same thing might be said of the different reflections of the same mirror left a century earlier in the French Code Civil, for this, too, in certain of its most important parts, is only a condensation of the Roman Law of our ancient authors. The Roman Law as law positive has disappeared only before laws that proceed from it even when they diverge from it, and that could not have been made without it. All the same, however, it has disappeared. From a living law it has become a dead law. And manifestly it would be a foolish thing to suppose that this was not bound to have any consequence, at any rate in the countries where, before the transformation, it was a law positive, and where the study of it was the practical study of a system of law actually in force.

II.

The consequence has not been the disappearance of Roman Law from the course of legal instruction. It has not disappeared from the Courts anywhere—no more in Germany than in France, neither in Italy, nor in Switzerland, nor in Austria, nor anywhere. On the contrary, it is always taught and studied everywhere, both in the countries where the Roman laws have been stripped of the authority as law that they had so long possessed, and in those countries, such as Great Britain and the United States of America, where they never possessed this authority, at least in a manner general and direct, and also in those countries of the North and of the South—Sweden, Norway, Spain, and Portugal—which hold positions more or less intermediate. The Roman Law still has to-day everywhere

in the Courts and in the examinations, a position that in different places may be more or less wide and more or less well allotted, that may also have been more or less questioned, but that has been taken away from it nowhere, for the study and the teaching of it have been everywhere regarded as maintaining in the sphere of theory all the authority that they no longer possessed in the positive sphere. It has been maintained everywhere for imperious reasons drawn at once from didactic considerations, from historical considerations, and even from rigorously practical considerations, on which I have no need to dwell at length in a meeting of professors of law.¹

In the practical sphere of judicial life itself, a knowledge of the Roman Law remains indispensable for the understanding of the modern laws for this narrow reason, that many of these laws, almost all the codifications, come from it immediately or mediately; but also for the wider and higher reason pointed out by Sir Henry Sumner Maine,² that it is the Roman Law that has furnished with its technical language and its juridical categories what may be called the universal common law of to-day, that system of allied juridical ideas which is expressed in terms more and more symmetrical in the laws of all the civilised countries, in spite of the inevitable and legitimate diversities.

In the sphere of teaching it is a commonplace, much contested but still very true, to extol the unequalled part played in the education of the jurist in course of formation, in the instruction and the training of his juridical sense, by the study of the Roman sources—the way in which these discussions, precisely by reason of their character as abstract discussions about institutions that have passed away, perform in juridical education the same indispensable function as the study of the classical languages performs in literary education.

Finally, in the historical sphere, the Roman Law furnishes us with perhaps the best field that will ever be available, at all events the best that is available to-day, for studying, in the case of a given nation, the way in which its institutions take their rise, grow, and decay in accordance with a rhythm the search for which is at once the most delicate part of sociology and the best remedy for the two dangers besetting the mind of the jurist—the danger of regarding the laws of one time and of one place as immutable and universal facts, and the danger of taking them, inversely, as purely artificial accidents exclusively dependent on the arbitrary decision of the legislator.

And it is by holding to these different reasons, sometimes rather to one

¹ Cf. Girard, *Manuel élémentaire de droit romain* (5th ed. 1911), pp. 4-6, and the works there cited, p. 4, n. 2. Also G. Cornil, *Les codes modernes et le droit romain* (*Bulletin de l'Académie royale de Belgique, Classe des Lettres*, etc., 1912, pp. 284-6); and B. Kuebler, *Die Aufgabe der historischen Rechtswissenschaft* (*Archiv für Rechts- und Wirtschaftsphilosophie*, 1912, pp. 588-601).

² *Village Communities*, London, 1871, p. 330 (*Études sur l'histoire du droit*, Paris, 1889, p. 404).

and sometimes rather to another, but still to all of them, that one has always felt, and one always feels, in instructed circles, the impossibility of refusing to the Roman Law its legitimate position in legal study. If it were necessary to adduce a proof of the danger of withdrawing the Roman Law from this position, it would be found in an example that the Austrian Romanist Wlassak¹ not very long ago recalled—the lamentable decline of the study of law in Austria last century, when, by an aberration of judgment now repaired, Austrian science had believed that in consequence of the promulgation of the code of 1811 it could abandon the theoretical study of Roman Law, then so brilliantly pursued in the rest of the German-speaking countries, and confine itself to the material interpretation of a law without a past.

If it were necessary to cite a specially striking illustration of the way in which the utility of this study is understood nowadays, it would be found, gentlemen, in your own country—in the manifest extension that has been given to the teaching of the Roman Law in the English Universities at the very moment when the Roman Law was steadily losing its authority as law on the Continent, in the very country where it had long before been remarked that the upbuilding of the old legal system bears the closest resemblance to the methods of the jurists and the prætors of Rome, but where the practical influence of the Roman laws was perhaps the most limited.

III.

At the same time this retention of the Roman Law in the course of instruction, for ends that it has not always had, after the disappearance of the ends in view of which it long figured in the programme, evidently raises the question how it ought to be taught henceforth. And there is one thing certain. That is that it can no longer be taught in the way in which it would have been necessary to teach it as law positive, applicable to private suits after the manner of a law passed by a modern parliament—as the English laws of 1902 and 1907 relating to married women's property, as the German law relating to bills of exchange, or as the French law of March 23, 1855, relating to the conveyance of real property. It can no longer be a question of treating the texts of the *Corpus Iuris* as the articles of a somewhat incongruous code, in which the passing of a new law abolished a constitution of the code, but in which the constitutions of the code were to be read with the fragments of the Digest, and in which, to use a well-known expression, the texts of the Jurists of the Digest played with each other the part of "fungible things." It is obvious enough that such a conception of the study of the Roman Law would not render any of the services that are required of it nowadays.

In order that it may render such services, what is necessary, on the contrary, is this: that we shall not treat the texts of the Digest as fungible

¹ *Das Rechtsgeschäft und das Verhältniss des Willens zur Erklärung nach dem Deutschen Bürgerlichen Gesetzbuch* (Wien, 1902), p. 2.

things—that we shall seek, not the ways of reconciling them (as all the texts of the *Corpus Iuris*) with one another, but the discrepancies between them, which are the indexes of the individual disagreements and of the historical changes. The thing is to attain, by the aid not only of the compilations of Justinian but of the whole of the literature juridical and extra-juridical—of all the documents whatsoever—to the most complete knowledge possible, in general and in detail, of the juridical evolution that runs from the foundation of Rome down to Justinian, and even down to our own times through that survival of the authority of the Roman laws of which the reception of the Roman Law in Germany, and its still earlier application over the other half of the Continent, have been the causes down to our own times.

It might be supposed that we must consequently not only abandon the ways long ago traced out, but enter on ways entirely new. In point of fact, this is not at all the case. We have only to tread more firmly and more consciously a road already followed. It so happens that the movement in the direction we have to go began long before the existing facts provided its full justification.

The historical study of the Roman Law is, it might almost be said, as old as the study of the Roman Law. Not to go farther back, it was already fully entered upon at the time of the Renaissance, with Alciat, Cujas, and so many others. But, above all, in our time, in the Germany of the nineteenth century, which certainly held in Roman Law the same leading position that had belonged to France in the sixteenth century, the school of Savigny, which theoretically treated the fragments of the Jurists as things fungible, nevertheless contributed more powerfully than had ever been done before to disengage from the recent sources the classical Roman Law, and even to a certain extent the previous Roman Law. And if the treatises on the Pandects could give no more than an accessory position, and, so to say, toleration, to the historical inquiries, it is still the work of the Pandectists that furnished the studies of Roman Law with the excellent historical material that is at the disposal of all of us to-day. It was the time when the Roman Law was still a practical law in Germany that saw the accomplishment, notably in Germany, of those systematic explorations of the literary sources, juridical and epigraphical, by means of which any of us now can perceive each phase of the development more clearly than Cujas was able to do, or even Savigny. Again, it was before the promulgation of the new code that there began in Germany, as elsewhere, those searches for papyri that have yielded so much valuable information, not only on the law special to Roman Egypt, but on the general institutions and the Principate.¹ It was then also that was undertaken that vast work of analysis and of individual examination of the sources that, at once by the search for interpolations² and by inquiry

¹ Girard, *Manuel*, Bibliography, p. 68, note 1, 2°.

² *Ibid.* p. 79, n. 3. Also, e.g., Ad. Berger, *Kritische Vierteljahrsschrift* (Munich), 1912, pp. 397-445.

into the structure of the Edict¹ and the works of the Jurists,² has done so much to perfect our knowledge of the monuments and of the literature, at the same time that it has restored whole masses of unknown texts upon the institutions that passed away under Justinian. The new Roman Law, harmonising by its spirit and its contents with the new needs, thus found itself established beforehand at the moment when these needs became the most universal and the most exclusive.

But I should like, in conclusion, to remark one thing. It is this: that, if the edifice is already almost completely erected, if we can contemplate the grand lines of it with the feeling of satisfaction inspired by the view of a solid and welcome building, this does not mean that this building does no longer call for any complementary work; it does not mean that we have reached in the study of the Roman Law that point of completion and, as it were, of saturation, where there remains, so to say, no further investigation to be undertaken until the development of a new state of facts.

It is the natural and inevitable effect of every increase of human knowledge to propound new problems while resolving old ones. The new and unexpected accessions of information that have been obtained in recent years are due to new texts and to the more skilful treatments of the old texts. But it remains to seek the reaction of this information upon our previous views—to proceed, after it has been provisionally and summarily recorded—to its definitive and reasoned incorporation in the body of our knowledge. It would be a mistake to believe that this is a light work, or that the results must be insignificant. The question, fundamentally, is nothing less than the systematic revision of the whole of our science, alike the expositions of it and the collections of sources themselves.

I will cite a single example of this which, I believe, has not yet been adduced, and which appears to me specially striking. It refers to the source

¹ Otto Lenel, *Edictum Perpetuum*, first German edition, Leipzig, 1883; French translation, revised by the author, Paris, 1901-3, 2 vols. in 8vo; second German edition, Leipzig, 1907. These three issues, German and French, of the great work of Lenel, which really form three distinct editions of it, are the basis of all the later works on the subject, and particularly of the texts, with more or fewer variants, given by Lenel himself in Bruns, *Fontes Iuris Romani Antiqui* (7th ed., 1911, I, No. 38), by Riccobono, *Fontes Iuris Romani Antejustiniani* (vol. i., 1909), by Girard, *Textes de Droit Romain* (4th ed. 1913, pp. 137-72), and more succinctly still by P. Krueger in the first stereotype edition of Mommsen-Krueger's Digest, *Add. III.*

² The leading work is still Lenel's *Palingenesia Iuris Civilis* (Leipzig, 1888-9, 2 vols. in 4to). Cf. P. Krueger in the stereotype edition of the Digest, *Add. II.* Also the investigation into the chronology of the Jurists and of their works started more than fifty years ago by Fitting's monograph, *Ueber das Alter der Schriften Römischen Juristen von Hadrian bis Alexander* (Basel, 1860), reprinted by him in 1908 under the new title, corresponding to its new contents, *Alter und Folge der Schriften Römischer Juristen von Hadrian bis Alexander, zweite völlig neue Bearbeitung* (Halle a. S., 1908). See the reviews of this second edition by B. Kuebler, *Kritische Vierteljahrsschrift* (Münich), 1911, pp. 1 seq., and by Girard, *Göttingische gelehrte Anzeigen*, 1910, pp. 245-58 (reprinted in Girard, *Mélanges de Droit Romain*, vol. i., 1912, pp. 309-40).

that is for Romanists the pre-eminent source, and to the excellent edition of it that has been issued by a Master that I venerate more than any other. I speak of the Digest of Justinian, and of the edition of it that was issued by my dear and lamented Master, the illustrious Theodor Mommsen.¹ In this edition, which is a model, and which has been received everywhere with the highest admiration, Mommsen, in my opinion, has set forth to perfection the principles of classification of the MSS., and has examined these MSS. with quite incomparable accuracy; and he has constituted a text that is the acme of elegance and insight. The value of the edition has not been affected either by the publication of the photographic reproduction of the Florentine MSS.² or by certain palæographical works:³ these, in short, have only had the effect of bringing into relief the solidity of the Master's work. But still this work belongs to its time by an inevitable trait.

At the period when Mommsen constituted his edition it was known that the Digest contained interpolations. It was impossible, however, to suspect that they had been so frequent, so far-reaching, and so extensive as to-day we know them to be. And it has already become necessary to satisfy the needs evoked by the new state of our knowledge, by indicating in recent editions, and even in the latest stereotype editions of Mommsen's work,⁴ below the form presented by the texts in the compilation of Justinian, the different form that many of them probably had in the writings of their authors. But the same cause involves, in respect of the body of the work, a consequence more serious and more difficult to repair.

This relates, in the first place, to the appreciation of the defects presented by the MS. text that has been handed down to us, the faults in orthography and in grammar that are attested by the Florentine MS. as well as by the MSS. of Bologna, and that are sometimes even certified by the evidence of the Greek scholiasts—a process so important for the constitution of the printed text; and, in the second place, to the question when these defects are to be ascribed to unintentional mistakes of the copyists of Justinian or of the previous copyists, and when to intentional interpolations by the compilers. Writing at a time when it was not yet known how multifarious and far-reaching the interpolations were, Mommsen could not but admit many more

¹ *Digesta Iustiniani Augusti recognovit Th. Mommsen* (Berlin, 1866-70, 2 vols. in 4to).

² *Iustiniani Augusti Digestorum sen Pandectarum Codex Florentinus olim Pisanus phototype expressus* (Rome, 1902-12, in folio).

³ See especially Hermann U. Kantorowicz, *Die Entstehung der Digestenvulgata, Ergänzungen zu Mommsen* (Weimar, 1910): reprint, with additions, of articles that appeared in the *Zeitschrift der Savigny-Stiftung, Roman. Abth.*, vol. xxx. 1909, pp. 183-271, and vol. xxxi. 1910, pp. 14-88.

⁴ See the first volume—the only volume that has yet appeared—of the recent Italian edition (*Digesta Iustiniani Augusti recognoverunt et ediderunt P. Bonfante, C. Fadda, C. Ferrini, S. Riccobono, V. Scialoja, Iuris Antecessores*, Libri i-xxviii. Milan, 1908, 1 vol. in 18mo); and the 11th and 12th stereotype editions of Mommsen's Digest, published in 1908 and 1912, by P. Krueger.

unintentional mistakes and many fewer conscious modifications than would be admitted to-day; and consequently, in the constitution of his text, he drew from the supposition of inadvertence inferences different from those that must be drawn from the proof of deliberate intention.¹ It follows that this

¹ I give one more example, which, I believe, has not been pointed out—the fragment D. 21. 2. 46. 2. taken from the sixth book of the *Quæstiones* of Africanus: “Cum tibi Stichum venderem dixi eum statuliberum esse sub hac condicione manumissum ‘si navis ex Asia venerit,’ is autem ‘si Titius consul factus fuerit’ manumissus erat: quærebatur, si prius navis ex Asia venerit ac post Titius consul fiat atque ita in libertatem evictus sit, an evictionis nomine teneatur. Respondit non teneri eum: etenim dolo malo emptorem facere, cum prius exstiterit ea condicio quam evictionis nomine exsolverit.” Mommsen discovers in the last two lines no fewer than three flaws: the verb *teneatur*, which he corrects into *teneat*, because the consulter speaks of an act done by himself (*cum tibi Stichum venderem dixi* . . .) and not by a third person; *eum*, which he deletes for the same reason; *quam*, which he corrects into *quæ me*, because it is impossible to conceive any sense whatever in which the purchaser would have been able *exsolvere* a condition. And he supposes three distinct blunders of the copyists, in consequence of which they would have written *teneatur* instead of *teneat*, added an *eum* which was not in their copy, and read in that copy *quam* instead of *quæ me*. The three flaws are explained more simply by a single cause—interpolation in the text. In fact, as has long been perceived, the fragment in its first form referred, not to the theory of the guarantee in consensual sale, but to that of the *auctoritas* in mancipation: it referred to the declaration by which the mancipator expressed beforehand the *auctoritas* in view of a given ground of eviction, and to the point whether this declaration loses its binding force when the ground of eviction has been inaccurately stated, but this inaccuracy has not prejudiced the purchaser. (See, on this question, besides our § 2 and § 3 of the same text, Pomponius, 6 *ad Sabinum*, D. 19. 1. 7; Iulianus, 57 *Digestorum*, D. 21. 2. 39. 5; and cf. D. 21. 2. 69. 3-4, where Sævola, 2 *Quæstionum*, on the point of inaccurate statement of the sum for which a *statuliber* is to obtain freedom, cites a divergent opinion which he ascribes to Servius Sulpicius, and which he says had prevailed, but which, if it seems indeed to be accepted by Gaius (D. 21. 2. 54. 1), does not appear to us to have been followed by Africanus, citing Iulianus, in § 3 of our fragment, or by Paulus, 5 *ad Sabinum*, D. 40. 7. 10). And consequently the words *evictionis nomine*, which occur twice in our § 2, are marked as interpolated in place of mention of the *auctoritas* by Lenel in the *Palingenesia* (Africanus, No. 63,), and by Krueger in his 11th stereotype edition. Only these authors have failed to notice that the interpolations must have involved far deeper modifications of the text than the mechanical substitution of the word *evictionis* for the word *auctoritatis*, and that it is these modifications that have undoubtedly been the origin of our three inaccuracies. In fact, it is not sufficient, for the restoration of the original form of the text, to substitute in the two places in question the word *auctoritatis* for the word *evictionis*; for the respondent cited by Africanus—that is to say, as we know, Iulianus—cannot have said that the seller is not liable because the purchaser is guilty of *dolus*: Iulianus cannot have said that, because the *dolose* character of a suit, which may, in the new law, involve the barring of the suit, the paralysis of the right by means of prætorian measures, the *exceptio doli*, cannot exclude the existence of the right exercised under the strict civil law, which is that of mancipation and of the action *auctoritatis*. Iulianus then said, on the contrary, that the seller is liable where the ground of eviction has not been removed by regular process, but that the action brought by the purchaser is paralysed by the *exceptio doli* when he acts in bad faith in bringing his action when the inaccuracy of the declaration has not prejudiced him; as when, as in the case before us, the ground of eviction, the *auctoritas* for which was mistakenly given, has arisen before that for the want of *auctoritas* for which he complains. The text, therefore, on its insertion in the Digest,

learned and admirable edition, which many people—and I am one of them—have long considered as definitive as a human work can be, will have in its turn to give place to a new edition that shall preserve its merits while avoiding its shortcomings. And this new edition will come in its time—though undoubtedly that time is still far distant—when the results of the present investigations of the interpolations are made sufficiently clear by reflection and criticism for the definitive acceptance of them not to be premature. But, in the meantime, we can say to ourselves—all of us that teach the Roman Law, and, more broadly, all of us that teach law to-day—that we are at this very moment collaborating in the preparation of this future edition, as we are collaborating in the general development of the science of

was modified, not in a word or two, but in the whole of its concluding part; and the assemblage of flaws presented by this concluding part, which is not at all explained there by mistakes of copyists, which would have no reason for being more numerous in that place than elsewhere, is on the other hand perfectly explained by the unskilfulness that the compilers show every time they have to make an alteration of any considerable extent. As to determining precisely how the alteration was made—that is to say, what was the exact reading of the text before its modification—naturally one can only offer conjectures more or less plausible; for the original text may have expressed in any one of several forms ideas very much equivalent. I indicate only the restoration that appears to me the most probable because it seems to account best for the present form of the text. Africanus may have written at the opening of our passage, not, as the authors cited above restore it, “*quærebatur . . . an auctoritatis nomine teneatur*,” which would not explain the passing from the first person to the third, but “*quærebatur . . . an auctor teneatur*,” which does explain it. Then he cited the response of Iulianus, according to which the seller is liable but the purchaser will be barred by the *exceptio doli* because he brings his action in bad faith, in some such form as this: “*Respondit teneri eum, sed emptorem de auctoritate agentem exceptione doli mali repellendum esse; etenim dolo malo facere emptorem. . .*,” Then, finally, the text might have stated how it was that the purchaser committed an act of bad faith, not by the words “*cum prius exstiterit ea condicio quam auctoritatis nomine exsolverit*,” which are as unintelligible with *auctoritatis* as with *evictionis*, but in some such way as this: “*Cum prius exstiterit ea condicio quæ auctorem exsolverit quam is auctoritatem defugerit*.” This gives us nearly the original text of Celsus: “*Quærebatur . . . an auctor teneatur. Respondit teneri eum, sed emptorem de auctoritate agentem doli mali exceptione repellendum esse; etenim dolo malo facere emptorem si agat de auctoritate cum prius exstiterit ea condicia quæ auctorem exsolverit quam is auctoritatem defugerit*.” The compilers have taken, in the middle, what was said about the existence of the obligation and of the paralysis of it by the *exceptio* and turned it into the expression that states that the obligation does not exist and justifies its non-existence by the availability of the *exceptio*; but, further, in their preoccupation with the suppression of every mention of the *auctoritas*, at the beginning they replaced *auctor* by *evictionis nomine* without noticing that this rendered *teneatur* and *eum* inexplicable, and at the end they on the one hand suppressed the circumstance “*si agat de auctoritate*” and the final point “*quam auctoritatem defugerit*,” and, on the other hand, in the expression “*quæ auctorem exsolverit*” they again replaced *auctorem* by *evictionis nomine*, changing “*quæ*” into “*quam*” so as to give the remaining member of the expression a better turn, without seeing that they wholly deprived it of sense. And the interpolation is thus found to give rise to our three inaccuracies, which are not to be rectified as mistakes of copyists, but to be preserved in the text as the authentic work of Justinian’s commissioners,

law, by the very fact that we are participating, each in the measure of his strength, in the collective work that is being more and more carried out, on the same methods and to the same ends, in all the schools of law worthy of the name. I have need, gentlemen, to remind myself of this community of all the branches of our studies in order to prevent me from feeling more embarrassment for having addressed you at such length on the branch with which I am most familiar.

THE USE OF CHEQUES IN FRANCE.

[Contributed by GEORGE R. BARCLAY, ESQ., *Licencié en Droit.*]

CHEQUES have not been used in general practice in France until quite recent years, and, even now, their use is far from being as general as it is in England. They were first introduced by a law of June 14, 1865, which was subsequently considerably added to by a law of February 19, 1874. Neither of these laws, however, mentioned the possibility of crossing cheques. This want has now been supplied by a law of December 30, 1911.

In later years, owing to the close contact between France and Great Britain, and the gradual introduction of British business methods into France, crossed cheques had been used to a limited extent, and were cashed over the counter when made payable to a public officer ("officier ministériel").

Public officers are persons holding office subject to confirmation of the State and under the control of a special committee for each class of office, whose number is limited and who exercise their profession under conditions and restrictions fixed by law. They are protected, on the other hand, by a monopoly, certain operations being of necessity carried through by them. Such are : advocates before the Court of Cassation, avoués, bailiffs, notaries, auctioneers, brokers, and stockbrokers.

The law of December 30, 1911, is worded as follows :

Art. 1. The law of June 14, 1865, is completed by the following dispositions :

Art. 8. A cheque crossed by two parallel lines can be presented for payment only by a banker. It can only be drawn on a banker. The crossing can be made either by the drawer or by a holder.

Art. 9. The crossing can be general or special.

It is general if, between the two lines, there is no indication, or only the words "& Co." It is special if the name of a banker is written between the two lines. General crossing can be converted into special crossing. A cheque bearing special crossing can only be presented for payment by the banker designated. However, if the latter does not present the cheque for payment himself, he can substitute another banker.

The bearer must not strike out the crossing or the name of the banker designated.

Art. 10. The drawee who pays a crossed cheque to any one but a banker if the crossing is general, or to a person other than the banker designated, in the case of special crossing, remains liable for the amount.

Art. 2. Paragraph 2 of Art. 5 of the law of February 19, 1874, is completed by the following disposition :

However, as concerns cheques handed by a banker to a clearing house, it will be sufficient to stamp on the cheque, with a date stamp, the word "Compensé" ("cleared").¹

No mention, it is seen, is made of public officers. When the Bill was presented before the Upper House (Senate), M. Fortier, Chairman of the Commission, suggested that public officers should be allowed, like bankers, to present crossed cheques for payment, and he pointed out that, otherwise, the new law would not give satisfactory results. In France, the number of persons having a bank account is very limited, especially in the provinces, and it was not advisable to base the law on the same conditions as were to be met with in Great Britain. The Bank of France had understood this perfectly well, and, in the instructions given to the managers of its branches, it had been specified that crossed cheques should be paid over the counter to public officers as well as to bankers. M. Fortier pointed out that, in order to reap the full advantage of the new law, and thus forward the interest of trade in the country, it would be necessary to add to Art. 8 the words : "or to a public officer." This view was, however, not adopted by the Senate, and the Bill was passed as quoted above.

It is not necessary to go into the details of the advantages which business in general will derive from this new law, the qualities of crossed cheques being sufficiently appreciated in England. French lawyers, knowing these qualities, had advised the use of crossed cheques for many years, and, in particular, MM. Lyon-Caen and Renaud, in their very complete work on French commercial law,² stated that : "The use of these cheques could be extended, and it would not be necessary to pass a law whereby to regulate them. The party incurring a liability is always at liberty to stipulate who is

¹ Art. 5 of the law of February 19, 1874, is itself an addition to Art. 1 of the law of June 14, 1865. The complete text now reads as follows :

(Art. 1, June 14, 1865) : A cheque is a document in writing which, in the form of an order to pay, is used by the drawer to withdraw, in his own favour or that of a third party, all or part of his funds carried to the credit of his account with the drawee and which are at his disposal. It is signed by the drawer, and bears the date of the day on which it is drawn. It can only be drawn at sight. It can be made payable to bearer or to a person designated therein. It can be made payable to order and negotiated by endorsement in blank.

(Art. 5, February 19, 1874) : The cheque bears indication of the place from which it is drawn. The date of the day on which it is drawn is written out in full and in the hand of the person who has written out the cheque. The cheque, even to bearer, is receipted by the person cashing it ; the receipt is dated.

(Art. 2, December 30, 1911) : However, as concerns cheques handed by a banker to a clearing house, it will be sufficient to stamp on the cheque, with a date stamp, the word "Compensé" ("cleared").

(Art. 5, February 19, 1874) : Any stipulations between the drawer, the beneficiary, and the drawee, having the object of making the cheque payable otherwise than at sight on first demand, are *ipso jure* null and void.

² *Traité de Droit Commercial*, 4th ed., vol. iv. No. 566 ter. p. 490.

to receive the payment. A special stipulation, indicating that a cheque will be payable only to a banker, would be valid, and would render the drawee responsible if he paid to any other person. The tacit convention which is the result of crossing a cheque must have the same effect as if it were expressly specified."

Further, the Chambers of Commerce of Paris, Lille, Calais, the French Chamber of Commerce in London, the Société d'Economie Industrielle et Commerciale, the Association Générale des Tissus, l'Union des Banquiers de Paris et de la Province and others had, on various occasions, expressed the desire that crossed cheques be introduced into France by law, and it is hoped that French commerce will reap a large benefit from their now official introduction into the country.

When the Bill was discussed before the Chamber of Deputies figures were given to show the results of extensive fiduciary circulation in England as compared with France. In 1905, the Bank of France had in circulation about 4,527 millions of francs in notes, whereas the Bank of England only circulated 725 millions, in spite of the fact that English trade has about three times the importance of French trade. This enormous difference can be explained, to a certain extent, by the extensive use made of cheques in England.

The system now introduced still falls short, however, of that existing in England.

Indeed, in England, crossed cheques are seldom cashed, but compensated at the Clearing House. In France, on the other hand, a crossed cheque is to be considered as an order to pay. The wording of the law itself leaves no doubt upon this :

"The cheque crossed by two parallel lines can be *presented for payment* by a banker only. . . . The cheque bearing a special crossing can only be *presented for payment* by the banker designated," etc.

Under the circumstances, it is to be wondered whether the new form of cheque will be able to render the same services in France as in England. M. Maunoury, reporter to the Chamber of Deputies, stated, in a letter to the *Temps* published on January 9, 1912 :

It was necessary to allow, in practice, this actual cash payment. The number of persons having a bank account in France is not sufficiently considerable to have allowed any other process. It was necessary to allow persons not having a banker to present a cheque for collection. Otherwise, it would have been necessary for the drawer, before signing a crossed cheque, to make sure that the beneficiary had a bank account, which would have limited their use to a very large extent.

M. Maunoury further says it is hoped that the first result of the new law will be to convince the public of the usefulness of having bank accounts, and, when their number has increased sufficiently, it will be time to examine an amendment and a completion of the present law.

In fact, an important step has been taken not only towards accelerating and facilitating the circulation of money, but also recent sensational crimes have opened the eyes of the public to the danger of large sums in cash, sometimes fortunes, being carried in the public thoroughfares by men entrusted with the collection of bills, cashing of cheques, etc. And it is hoped more business firms will be induced to open bank accounts, not only for convenience, but also for safety.

THE DIVORCE REPORTS FROM AN AMERICAN STANDPOINT.

[*Contributed by J. ARTHUR BARRATT, ESQ., of the United States Supreme Court Bar and English Bar.*]

I HAVE been asked for my views upon the Divorce Reports from the point of view of American Law.

The recommendations of the Majority correspond to a considerable extent with the provisions of American law and practice as established for many years. Four of the five proposed additional causes for absolute divorce—desertion, cruelty, habitual drunkenness, and imprisonment for life—have long been such causes there. Insanity is a cause now in only four States.

The recommendation that divorce causes should be heard locally in districts corresponding with the Circuits of the High Court is similar to the American practice. There, divorce actions may be heard in practically every county of each State because the Supreme Courts sit there periodically, but the jurisdiction is not limited by the income of the parties, nor in any way except by statutory causes for divorce and the length of residence in the county.

Judicial separation or "limited divorce" is granted for much the same causes as those proposed by the Majority. The two sexes have always been on an equal footing there as to grounds on which divorce may be granted. The proposal is new to allow British subjects "domiciled in England but resident elsewhere in the Empire" to have their divorce (if valid at the place of residence) registered in England and there deemed operative if made on grounds permitted "by the law of England." This is contrary to the American doctrine that the Courts of the domicile alone have jurisdiction of divorce. But if the law of the domicile by statute declares such divorces valid, that law must prevail in the domicile. I am not prepared to say that such divorces would be deemed valid by the American Courts, though I can see no sound objection to them if recognised by the law of the domicile of both parties.

The suggestion is made that "when the husband and wife are domiciled within the jurisdiction at the time of the commencement of the desertion of the wife, she may maintain a suit, as if the domicile remained what it then was." This rule is practically enforced to-day. The American rule, however, seems to me fairer and more in accordance with the true principle

involved. There a woman, who has any valid ground for absolute divorce against her husband, may acquire for herself a separate domicile and bring action for divorce in that domicile. The only possible principle violated is the antiquated one of the legal unity of husband and wife, when for scores of years the law has recognised that in various respects she is a separate legal entity. If the marriage is *de facto* dissolved by the husband's conduct, he has forfeited any conceivable right to this fictitious legal unity. The Majority blinks this fact. Why not recognise it, simplify the law and the practice accordingly?

The grounds upon which nullity of marriage is to be permitted have all along existed as such grounds in America, except perhaps epilepsy concealed at the time of the marriage. This seems to me obviously a proper ground of nullity.

Absence unheard of for lengthened periods has long been recognised as a ground for divorce in America. As to giving the Court a discretion to grant a decree where adultery is a defence, I think this a wise provision, but I do not think it would be generally approved in America. As to disobedience of an order for restitution of conjugal rights constituting statutory desertion, I know of no such provision in American law, and certainly it easily lends itself to "collusion," and I think with the Majority it should be abolished.

Several States already provide that the decree absolute is unimpeachable after a certain period. This has been variously interpreted, but not to include such "fraud" as goes to the jurisdiction of the Court.

Trial by jury is dispensed with in several States, and in actions against the husband I should favour it, owing to the great reluctance of juries to find against the wife. Intermarriage of the guilty parties is forbidden in several States, but such statutes are generally regarded as "penal" and as having no extra-territorial force.

A considerable American public sentiment would, in the opinion of a number of Presidents of Bar Associations (App. pp. 95-119), approve the recommendation of the Majority as to publication of reports of divorce cases, but the liberty of the press is a constitutional question, and it is doubtful whether publication of the actual proceedings in Court could be legally prohibited. But the power of the Court to hear "in camera" and to seal up its records is undoubted, and is sometimes exercised.

The statement, however, of Ambassador Bryce (App. p. 135) as to the proceedings in the divorce of certain wealthy persons is misleading. He says it was "conducted with such secrecy, without either party being present, that an outcry was raised by the newspapers concerning the privileges of the wealthy classes—when the power of their wealth was suspected as the principal agency in securing a private washing of dirty linen."

In New York the general practice is to have the evidence in defended divorce cases taken in private before a Referee appointed *ad hoc*. The Referee reports the evidence with his opinion to the Court, which, if it

approves, grants the decree. A formal motion in Court to confirm this report is all that is necessary. The testimony of any witness, including the parties, may be taken while he or she is absent from the State, or too ill to attend, just as in any other action. It was only the wealth of these persons which caused any comment at all, and as usual that comment distorted the facts.

With these suggestions I leave the proposals of the Majority Report.

The most obvious criticism is that the Majority Report is characterised by its calm, judicial tone and temper, while there is a marked absence of the same in the Minority Report. The one attempts to deal with the vitally important questions at stake from the point of view of the best interests of the State, while the other, though assuming to act from the same motives and with the same object, approaches the solution of these questions almost entirely from the Church or ecclesiastical point of view. The former refers to an overwhelming mass of evidence in support of its claim that there are certain grave abuses urgently in need of reform, as proven by the statements of witnesses of the widest experience from almost every walk in life. The latter denies the existence of most of these abuses and of any need for reform, or "demand" for reform, supporting their conclusions partly by the answers to stereotyped printed questions circulated amongst the members of the Mothers' Union, a Church society, more than two-thirds of whom express no opinion at all; and further relying upon the opinions expressed by the Church of England Men's Society, of whom but 15,000 out of a membership of 100,000 expressed any opinion at all.

The Majority admit with candour that there was some evidence produced in opposition to their chief recommendations as to extending the grounds for divorce and making it more accessible to the poor, and admit that those who believe that marriage should be indissoluble, or that adultery alone should be a cause for divorce, are actuated by high principle, and that their opinions should be seriously considered. Let us see how the Minority, on the other hand, proceed. They appear to attack the candour of witnesses who are opposed to their contentions, and even question that the Majority Report is founded on any "principle" whatever (Rep. p. 186), and actually suggest that the grounds of divorce proposed by the Majority "lend themselves to the easiest collusion," and "necessarily involve the right of either partner to put an end to it (marriage) at will." They reject the evidence of one witness (Miss Davis) as being affected by "personal bias" sufficient to put her "out of court," and say :

It does not seem reasonable that we should be asked to accept as evidence of a great public demand the extreme opinions of a comparatively few individuals selected by a witness who shares those opinions.

This because she selected 124 "especially intelligent" women officials of a society consisting of 23,000 members, and asked their opinion as to equality of treatment of the sexes in the matter of divorce and as to cheap divorces.

The obvious inference from this is that Miss Davis offered to the Commission the opinion of witnesses only which she already knew agreed with hers. Whereas she says (36974):

They were merely selected on account of their intelligence (we happened to know these officials were especially intelligent women), and with no regard to their views on the subject, which were *unknown in every case*.

The Minority make no reference to the more important part of the evidence (36983) where it is stated that at the Annual Congress of the Guild held at Oxford 680 working women delegates from all parts of England voted all but unanimously (only five voting against) for a resolution in favour of divorce being made cheaper, and condemning inequality in the grounds of divorce for men and women. The Minority occupy nearly a whole page of their highly condensed Report in rejecting the "selected" evidence of 124 officers of a society who were in favour of equality between men and women and of cheap divorce, and entirely ignore the practically unanimous vote of 680 delegates representing a society of 23,000 members, who expressed the same views.

As to the opinions expressed by the members of the Mothers' Union, the Minority infer (Rep. p. 176) from questions asked some witnesses that these opinions—

are deemed of little value because some of those who collected those expressions of opinion themselves believe that marriage is indissoluble even on the ground of adultery. In the absence of any indication of a desire on the part of these witnesses to deceive, or to convey an untruthful impression, we do not regard it as reasonable thus to dismiss as of no account so great a body of first-hand evidence . . . while it would be most unfair to regard the personal prepossessions of a witness as affecting the truthfulness of written statements given by other persons as the result of their experience and intimate personal knowledge.

Obviously this rule is not to be applied to others. Sauce for the goose is obviously *not* sauce for the gander. "Personal bias" applies to the latter, but not the former.

Again, the Minority, in discussing the letters (350) written to the Commissioners, state that in about 200 of them "there might be scope for one or other of the proposed widened grounds of divorce." But these are dismissed as practically valueless as evidence of any wide public demand, and the motives and candour of the writers are questioned. They say:

Some are obviously imaginary narratives . . . all are *ex parte* statements (!). In how many cases the writers have suppressed facts which, if known, would disentitle them to any relief or sympathy it is impossible to say, but it is more than probable that such facts exist.

Obviously the test of presumption of truth which is to be applied to the Mothers' Union is to be denied this "body of first-hand evidence,"

and apparently upon no other ground than the mere suspicion of the Minority. And yet in the same paragraph some candour is shown by saying :

We are very far from desiring to under-estimate the amount of trouble which some of these letters reveal. Amongst them are the pathetic records, obviously genuine, of many hard and heartrending cases. . . . The writers of the letters are not confined to any one section of the community ; some of them are evidently refined and highly educated, and others are almost entirely illiterate.

By questioning the value of the evidence and the motives of so many important witnesses it will not surprise the Minority if some of the evidence in support of their position is also called in question. While putting forward the evidence of the Mothers' Union as weighty proof of the lack of serious "demand" for divorce amongst the poor (Rep. p. 176), they say : "The evidence of clergymen of large working-class parishes is scanty, but, such as it is, it confirms that of the other witnesses."

To say the least, it is most unfortunate that the Commission was deprived of the evidence of a very large and influential body of men who would, if anybody, be able to state the actual conditions existing amongst the working classes. It may be that with their high order of intelligence they found themselves unable to answer, without discrimination, the question put to certain officers of the Mothers' Union (Rep. p. 176), "Whether, if divorce were granted in cases of desertion, permanent lunacy, and long sentences of penal servitude, it would tend to lessen the sense of the binding character of the marriage tie amongst the poor,"

It is obvious that most intelligent persons, who gave any thought to such a question at all, would wish to separate their answers and distinguish between such widely divergent proposed causes for divorce. It is plain that they might be in favour of one and not all. But we are told that these officers and members of the Mothers' Union (less than one-third of the whole) by a "great majority" answered this drag-net question in the affirmative (Rep. p. 176). That a great majority of these persons could have given any intelligent consideration to these three separate causes, and have in a body voted against their adoption *en bloc*, is humanly impossible. A just inference is that a large part of them gave no proper consideration to the question.

Again, the form of protest circulated amongst the members of the Mothers' Union against "the extension of facilities for divorce" and the expression of belief that "to cheapen or extend the grounds for divorce would be against the moral and social interests of rich and poor alike, and would encourage the seeking of divorce for trivial reasons," is in such general terms that the answer to it by a majority of 85,000 members is shorn of most of its weight as evidence ; for it is highly improbable that most of the members (chiefly working women) knew what the existing causes or "facilities"

for divorce are, or that they knew that divorce is practically denied to the poor in England, and that therefore they have really no "facilities" for divorce at all. Most of those persons who signed the protest would probably be astounded were they to be told that they had expressed approval of retaining a procedure which denied divorce to the poor while permitting it for the rich. And yet this is the effect of their protests. The very use of the words "facilities" and "cheapen" are misleading, and might equally be used in a protest against the use of alcohol, opium, or other noxious drug, or even against the White Slave traffic; and probably an equal number of the 85,000 would as readily have signed such a protest. From the very form, therefore, of these questions submitted to the Mothers' Union and the other societies mentioned, the answers lose most of their force as evidence against any demand for reform of the divorce laws.

So much for the candour with which the Minority Report deals with the evidence for and against its contentions. They conclude that "there is no effective demand that divorce should be made easier." But neither the character nor the weight of the evidence referred to by the Minority in support of this contention is, under any ordinary rules as to the probative force of evidence, adequate to controvert the evidence referred to by the Majority that there is a real necessity and demand for reform in the facilities available to all classes for divorce, and in the grounds for which it should be granted. And the Minority admit that there should be further facilities for divorce provided for the poor and that additional Courts should be established (p. 189), while denying that there is any effective demand that divorce should be made easier (p. 180). In this respect, at least, their opinion differs materially from the 85,000 members of the Mothers' Union, who would refuse any "further facilities" or cheapening of divorce.

The Minority attack the recommendations of the Majority as to new grounds for divorce, *seriatim*. Firstly they object to desertion as a ground, alleging (*a*) that it lends itself too readily to collusion, and (*b*) that the number of cases of desertion among the working classes and the poor has been exaggerated.

It is correctly stated that desertion is the most common ground for divorce in the United States (p. 180), but it is quite incorrect to quote the American witness (16326) as stating that "some form or some degree of mutual arrangement in a majority of the actions for divorce (for desertion) in the U.S. may be taken for granted." The context shows that this witness referred to *all* actions of divorce, and no other witness attempts to make such an exaggerated statement. How it can be correct to say that divorce for desertion is the most common ground "owing to the ease with which the charge may be supported," is not apparent either from the evidence or from experience, for there is but one State in the Union where desertion continuing for a less period than one year is a ground for divorce. In the majority this period is from three to ten years. The parties must have lived apart for

at least that period, so that it is impossible to understand how this ground lends itself to collusion more than the numerous other grounds which could exist while the parties were still living together, *e.g.* cruelty, etc.

As to the objection to "cruelty" as a ground for divorce, all that need be said is that it is a ground in most civilised countries or States, including several British colonies.

The fact that it is difficult of proof at times, and that no definite limits can be set to it, and that judges and juries may differ as to what constitutes cruelty, is no more an argument against it as a cause, than it would be to argue against "negligence" as a cause of action for the same reason, or against alleging "incompetence" of testator to make a will for the same reason. It is difficult to imagine a more feeble argument against it. Why should it "*inevitably* promote collusive suits" in the one case more than the other? Cruelty may well break up the home more quickly and more effectively than drunkenness, crime, adultery, or desertion, and is much less amenable to reform.

As to the objection that insanity should not be admitted as a cause of divorce, most American States are in accord with the views of the Minority, at least in the case of insanity of the wife.

"Habitual drunkenness" is a cause for divorce in the great majority of the American States and in several European countries and British colonies, as is also imprisonment for a term of years. The suggestion that divorce should be denied the injured spouse because the other *may* reform is more sentimental than practical. It could be safely left to the former to decide after the offence whether or not to take advantage of the law, and the possibility that he or she might do so must necessarily act as a powerful deterrent to any would-be erring spouse and tend to keep him or her in the path of rectitude.

The Minority object that the proposed new grounds of divorce are "purely empirical," "tentative, experimental, dependent upon qualification and degree," and that, under pressure of sufficient hard cases, they might easily be extended; that they are "frankly opportunist, designed to meet what are supposed to be the practical needs of the moment, and capable of expansion in any direction under the pressure for further facilities, which concession is almost certain to produce."

This position utterly ignores the experience of all the other great nations of the world where the proposed grounds have existed for many years. Experience does not prove that grounds increase under the pressure of sufficient hard cases, or for further facilities, or that their laws are "frankly opportunist." They take human nature as they find it, and all these great nations, it can well be assumed, pass these laws not to satisfy degenerate views as to what constitutes a proper married life, nor to pander to human weaknesses, but to provide adequate remedies for undoubted existing human wrongs and to endeavour to put an end to evil and misery which must exist in

every civilised community, and to protect the lives and ensure the happiness of thousands of innocent persons, whether men, women, or children.

The Minority quote the Rev. Dr. Dyke, who says : " We find no historical ground for the contention that easy divorce has increased social purity or happiness." I know of no respectable authority which has thus " contended " for " easy " divorce. It is assumed, without any evidence, throughout the Minority Report, that to increase the grounds for divorce necessarily makes it easier and tends towards immorality or unhappiness. The experience of other nations is exactly to the contrary, *e.g.* the United States.

It may well be suggested, on the other hand, that no witness has been produced before the Commission to prove that the limitation of the grounds of divorce to those existing in England has tended to make that country more moral than others of the leading nations of the world. The evidence produced does show that the moral condition of England was far worse before the enactment of the Divorce Act than it is to-day. And if that Act has had any effect at all upon the morals of the country, it is legitimate to argue that the " extension of facilities " for divorce provided by that Act have had an important effect upon the improvement of the morals of the country.

The Majority aptly quote (p. 38) Mr. Bishop, the greatest American authority on divorce, who says :

That the wrongs whence comes divorce are evils no one denies. If the refusal of divorce would prevent them, all would pray for it. But the experience of every State and country withholding this redress is practically, however men theorise, that no form of matrimonial delinquency is less prevalent there than elsewhere. And to the extent to which separations actually occur, the community is remitted back to the condition it would be in if marriage itself was abolished. Nor is there any subject, other than marriage, upon which any man claims that the commission of a wrong can be prevented by the law's denying redress to the injured person.

But in the opinion of the Minority their colleagues of the Majority are not only " frankly opportunist " but they too are " out of court," and, by a process of the most remarkable ratiocination, are shown to have founded their conclusions either upon no principle at all or upon a principle " which requires that divorce should be granted on the mutual consent of both parties, and on proof of the invincible aversion of either of them for the other." And this too in face of the Majority's own statement of principles (p. 37), viz. :

We have come to the conclusion that our Report shall proceed upon the basis that the State should not regard the marriage tie as necessarily indissoluble in its nature, or as dissoluble only on the ground of adultery ; but regarding the dissolubility of the tie as not limited to the ground of adultery, may allow other grave causes . . . (p. 90). Certain grave causes have already been recognised in England as elsewhere, as putting an end *de facto* to married life, and as entitling, or even compelling, reasonable and right-thinking persons to take legal action accordingly in their own interests and in the interests of their children.

Nothing could be clearer than this statement of principle by the Majority, and yet by an absurd syllogism, based upon a false premise, the Minority state this logically leads to divorce by mutual consent or when either party has an invincible aversion for the other. The Minority admit that marriages may be dissolved for adultery as the gravest breach of the marriage tie. How does this differ in principle from the contention of the Majority that other grave breaches should form a ground for its dissolution by the State?

The Majority do not say that *every* cause which *de facto* puts an end to married life should be a cause for divorce, but *certain grave causes*. Every cause would include prolonged illness of any nature, or the impossibility of both parties living in the same climate, and many other conceivable causes which must exist in every country, and put an end *de facto* to married life, and yet are nowhere recognised as grounds for divorce. What are such grave causes is a matter of the moral sentiment of each country and will differ in the different countries of the world and at different periods.

The false logic attributed by the Minority to the Majority may be stated thus: (1) Divorce should be permitted for any cause (not some grave cause) which *de facto* terminates the married life or which is generally recognised as leading to the break-up of married life. (2) Loss of affection is such a cause. (3) *Ergo*, divorce should be permitted for loss of affection.

This is stated by the Minority to be "the inevitable conclusion of the premises adopted by our colleagues." The answer is that the Majority have adopted no such premise, and the absurdity of the syllogism, which occupies most of the page (184) of this condensed Report, is apparent upon its face.

To bolster up this logic two important witnesses who believe in divorce by mutual consent are cited. Such persons can be found in any civilised community, whatever the cause for divorce may be therein. Instead of supporting the false conclusion above stated, the existence of these views and of laws in some countries permitting divorce by mutual consent, under certain restrictions, shows that there is a considerable body of intelligent public opinion in the world which admits this to be a good cause for divorce whatever the "principle" may be upon which such divorce is founded.

But the experience of many nations who have for years adopted the causes for divorce recommended by the Majority, does not show, in actual practice (on whatever "governing principles" these causes were adopted), that divorce by mutual consent, for loss of affection, or invincible aversion "inevitably" follows their adoption. It might with equal force be said that the divorce laws of all other civilised countries are based on no "principle" whatever.

The Minority insist upon some "governing principle" to guide them, as if there were some immutable law on this subject applicable to every country and every age. Whereas history shows that there can be no guiding principle except the moral sentiment of the community existing for the time being, unless the biblical view that marriage is to be dissolved only for adultery be accepted. And yet the widely differing opinions of ecclesiastics on that point

alone show the difficulty of adopting any fixed and unalterable "governing principle." Until they themselves agree upon this, suggestions of the lack of any such principle underlying the Majority Report come with little force. But the Majority have very clearly stated the principles upon which their Report is founded.

Touching upon the forces at work in modern society which may affect the family life, the Minority suggest that some of these are—

the increase in restlessness of modern life in all classes, and the social effects of modern industry, and of the massing of people in great towns.

And they further say :

Experience shows that on the whole increase of facilities and grounds of divorce leads to domestic instability. . . . This certainly seems to be the effect of divorce legislation in the United States, and it has led there to a strong and increasing reaction.

They quote President Roosevelt's message to Congress, suggesting that—

the divorce laws are dangerously lax and indifferently administered in *some* of the States, resulting in a diminishing regard for the sanctity of the marriage relation.

A large portion of the Minority Report is occupied by discussing the effect of the divorce laws in the United States, and the conclusion is drawn that the causes of divorce are so numerous and the administration of them is lax to such an extent as to "scandalise all decent people." Great store is laid by the resolutions of the National League for the Protection of the Family (a very small and inadequately supported Society) and the statements of the Rev. Dr. Samuel Dyke (referred to as "Dr." Dyke), and upon the evidence of one witness before the Commission. I propose, therefore, to examine at some length the conclusions at which the Minority have arrived from the state of affairs alleged to exist in the United States.

The Minority state :

In the United States of America the excessive prevalence of divorce is notorious, but the actual facts are not perhaps so well known in England as they ought to be.

With this latter statement I entirely agree, for the amount of misconception and misstatement about American Divorce Laws existing in England during recent years almost surpasses belief. For instance, it has been again and again preached from public platforms, from pulpits, and in the Press for years that divorce for incompatibility of temper can be had, and that one American marriage in twelve is dissolved by divorce. Numberless false statements have also been made as to the rapidity and number of divorces granted in particular Courts. A no less respectable journal than *The Church Times* on December 6 last gave currency to the misleading statement as to divorce granted by the Courts in Chicago, that "the record of fifty cases

an hour goes on day after day." This works out at about 21,000 per Court year of nine months for that city alone, whereas the U.S. Census Report shows (p. 92) that less than 23,000 divorces were granted in the whole State of Illinois from 1887 to 1906. When these absurd figures were questioned by a correspondent, the editor on December 20 last said :

The question is whether the number of divorces pronounced in Cook County, Chicago, is as many as 100 daily. Our figures were taken from the *Chicago Tribune*, but the statement is confirmed in the *Chicago Record Herald* of November 24, where it states that on the previous day, Saturday, "the long list of uncontested cases at the adjourned hour, early in the afternoon, had passed on more than 100." *It is improbable that the Court sits every day throughout the year, but neither journal gives information on the point.*

The fact is that in Chicago, just as in London, certain days are fixed by the Court upon which undefended divorce cases are tried. I have heard such cases tried in London in less than ten minutes. But what would be thought of an American newspaper which printed of English divorces "the record of one case in ten minutes goes on day after day"?

The Minority say "the main grounds of divorce existing to-day have been in operation for a long time. Indeed, the tendency during the last twenty years has been, on the whole, to restrict rather than to extend facilities for divorce." The Rev. Dr. Dyke, in his report of the National League for the Protection of the Family, 1909 (p. 8), says of these amendments: "Most of these are slight, yet some are important"—the term of residence before divorce being increased in thirteen States, and restrictions on remarriage of divorced persons in seventeen out of fifty States and Territories. And in the District of Columbia and North Carolina causes for divorce have been reduced to one, all this having occurred during the previous twenty years. The "tendency to restriction," therefore, is not very marked.

The Minority say that South Carolina, where the Roman Catholic Church is strong (16344)—

abolished divorce in 1878, with the result, *according to the evidence before the Commission*, that conjugal fidelity is greater and desertion less frequent in South Carolina than in other States.

They quote "the opinion of those on the spot," who say that "the inhabitants of South Carolina, generally speaking, are satisfied with the laws on divorce in this State as it now stands."

What does this evidence consist of? The opinion of one lawyer, one bishop, and one other clergyman. The lawyer states (16344):

This is *necessarily a matter of individual opinion*. We are inclined to think that there is a greater regard for the marriage tie in South Carolina than in other States.

The two clergymen say (16346) :

There is certainly greater regard for the marriage tie in South Carolina. Husbands and wives are also less likely to be indifferent to their vows, because they realise that the marriage tie is indissoluble in this State. Desertion is extremely rare, except among the white mill operatives in our mill villages. This is due in large measure to the changing and nomadic nature of the population, and to the further fact that *we have no registration of births or marriages.*

Professor Lawson (23858) says :

There (South Carolina) the standard of morality among the whites is very high, but at the same time among the negroes it is very low.

23859. We are told in South Carolina that there is legislation directed to providing how much a man may or may not leave to his illegitimate children?—I believe there is a provision of that kind.

23860. Is that resulting from the fact that *the State itself has been driven by the prohibition of divorce to recognise to a certain extent illegal unions?*—*I think so.*

This is the *whole of the evidence* before the Commission to prove that “conjugal fidelity is greater and desertion less frequent in South Carolina than in other States.” The most significant fact of all is that there is *no registration of births or marriages.* Why is this? When this is taken into consideration with the fact that South Carolina has a law forbidding a man to leave by will, away from his wife and children, more than one-fourth of his estate to his concubine, these distinguished witnesses must excuse others if they doubt that “conjugal fidelity is greater” in South Carolina than in the other States. Mr. Bishop suggests that the above statute would have been superfluous “had not concubinage been common” (16342). Mr. Amasa Eaton, former President of the Commission which drafted the new American Model Divorce Law (16339), considers it a “natural corollary” to the denial of divorce. And the Minority would do well to give us some stronger instances of the moral effect of the absence of all divorce laws than this evidence from South Carolina.

Louisiana is the only other State having such a law.

Throughout their Report it is the American law which is almost exclusively referred to as a sort of “evil example,” and certain conclusions drawn, which are supported only to a limited extent by the evidence produced before the Commission, and the law in other countries is dismissed summarily with the statement, “It would serve no useful purpose to describe in this Report all the various divorce laws in foreign countries and British Colonies.” Whereas the evidence shows that there is *practically not a single cause of divorce in any State of the United States which is not a cause for divorce in one or several of the countries of continental Europe or the British Colonies* (Maj. Rep. p. 26). This fact cannot be too much insisted upon in any criticism of American Divorce Laws. These laws are

the creation of its people, many millions of whom have come from Europe, where the same laws exist and have existed for many years.

Starting with the premise that all divorce is evil (the Church view, but not the State view), the Minority seem to infer that the greater the number of causes, the greater the evil. And they select two leading causes in America, "cruelty" and "desertion," as specially lending themselves to collusion, and therefore most objectionable as a cause for divorce.

"Cruelty" and "desertion" are causes for divorce in Austria, Bulgaria, Hungary, Netherlands, Norway, Portugal, Russia, Sweden, Switzerland, Victoria, and West Australia. "Desertion," also, in Denmark, Scotland, Cape Colony, Natal, New South Wales, New Zealand, Victoria, and West Australia. "Cruelty," also, in Belgium, France, and Roumania. "Mutual consent" is a cause in Austria, Belgium, Portugal, and Roumania. Other causes in Europe are "unconquerable aversion," "drunkenness," "dishonourable conduct," "wife attending races, theatres, or sports without the husband's consent," "gambling habits," "imprisonment for two years" (Rep. vol. i. pp. 4-10). In Norway there is divorce for "vagrancy, mendicancy, or drunkenness" (App. p. 43).

With these examples, I think the charge of "trivial causes" for American divorce needs no comment.

The evidence shows that it is not the number of causes nor the increase of causes which always leads to increase of divorce, actual decrease taking place in some States where the number of causes increased. The United States Census Report, 1909, p. 72, shows that the number of divorces per 100,000 of the population from 1870 to 1900 in New York—with only one cause for divorce—increased over 50 per cent.; in Connecticut, with eight causes, *decreased* over 30 per cent.; Rhode Island, with seven causes, increased about 20 per cent.; Vermont, with six causes, increased 50 per cent. (Evidence, Q. 16625 *et seq.*). As the Minority state—

The main grounds for divorce existing to-day (in the United States) have been in operation for a long time. Indeed, the tendency during the last twenty years has been on the whole to restrict rather than to extend facilities for divorce.

And yet it is during the latter part of this period that there has been by far the greatest rate of increase of divorce in America (Census Rep. p. 70).

As to "easy divorce" it may be pointed out that there are neither more nor less, but the same "facilities" for trying divorce actions in America as any other kind of civil action: all are equally "brought to every one's door" (Q. 16706). And as to "cheapening" divorce, it is no cheaper than any other form of civil action.

The Minority Report objects that "desertion" and "cruelty" as a cause for divorce in America have been followed by collusion "to such a degree as to scandalise all decent people," and yet the new Model Law there adopted by the National Congress of Uniform Divorce Laws after the gravest deliberation

includes those causes and also conviction for crime and habitual drunkenness, and it is said—

that this Act may be taken as the considered opinion of the leading American jurists and publicists as well also as the representative expression of the American Bar Association, of the State Commissioners on Uniform Law, and of the Inter-Church Conference (Evidence, Q. 16350).

As to the serious state of affairs thus suggested by the Minority, the evidence of all American witnesses attending the Commission was that the increase or freedom of divorce did not lower the standard of domestic morality or happiness there (Evidence, Qs. 16543 ; 16680 ; Lawson, 23910).

The letters from *twenty-one* out of *twenty-eight* Presidents of Bar Associations and Judges, selected without design from twenty-four different States, state that there is *no general public desire for a change of the law in those States*. And the *majority express the opinion that those laws do not lead to a disrespect of the marriage tie*. And in only a few States is it suggested that the administration of the law is lax (App. p. 95, and Evidence, Q. 16724).

The President of the Bar Association of Boston, Mass., says (App. p. 103, Ev., Q. 16725):

I am inclined to believe that divorce laws are wise and that nothing is gained by preventing the separation of persons whose life together is unhappy.

Judge Dupuy, Chancellor of the Superior Court, Chicago, says (App. p. 98 ; Ev., 16725):

I have presided at the trial of many hundreds of cases, and do not believe that many divorces are granted when the interests of society demand that they be withheld.

How do these eminent opinions of those "on the spot" comport with the suggestion in the Minority Report of "the grave disasters which have admittedly followed their adoption," *i.e.* the American grounds for divorce ; or that the working of them has "as a matter of fact been followed by a state of things regarded by most Americans with profound regret and alarm" (Report, p. 175) ?

On the contrary, Mr. Lawrence, President of the Cleveland Bar Association, says that notwithstanding the frequency of divorce

this situation has not as yet produced a lack of respect for marriage or tended in any degree to hasty marriages, although I confess the opposite would naturally be expected. The only explanation of the seeming paradox must be found in the *deep-seated regard for family relation*, and the *feeling against immoral conduct which still exists amongst the great mass of the American people*, notwithstanding some flagrant instances to the contrary which occasionally occur, and which, according to our custom, usually receive the most sensational publicity (App. p. 108).

Again, Professor Bryce, after a masterly review of this subject, says :

Indeed, *so far from holding that marriages are more frequently unhappy in the United States than in Western Europe, most persons who know both countries hold the opposite to be the case.* On the whole, therefore, there seem *no grounds for concluding that the increase of divorce in America necessarily points to a decline in the standard of domestic morality*, except perhaps in a small section of the wealthy classes. But it must be admitted that if this increase should continue, it may tend to induce such a decline. The same conclusion may well be true regarding the greater frequency of divorce all over the world (*Stud. in Hist.* p. 463 ; Q. 16708).

He also questions whether "the undoubted increase of divorce causes in our (English) courts since 1860 represents any decline in the average conjugal morality of the people " (p. 461).

Professor Lecky says (Majority Report, p. 40), with reference to the suggested decline of domestic morals in a section of the upper classes in England :

It may, I think, be confidently asserted that if such a change has taken place it has been due to quite other influences than the divorce law . . . luxury, idleness, and self-indulgence.

Again, De Tocqueville, the great French writer, said seventy-five years ago :

Assuredly America is the country in the world where the marriage tie is most respected, and where the highest and justest idea of conjugal happiness has been conceived.

In recent times, Professor Lecky said :

It is remarkable that this great facility for divorce should exist in a country which has long been conspicuous for its high standard of sexual morality and for its deep sense of the sanctity of marriage (2 *Dem. and Liberty*, p. 208).

And Commissioner Wright, who assisted in the present United States Census Report and drew up the former one, says :

I do not believe that divorce is a menace to the purity and sacredness of the family; but I do believe that it is a menace to the infernal brutality of whatever name, and be it crude or refined, which time makes a hell of the holiest human relations. I believe the divorce movement finds its impetus outside all laws, outside all our institutions, and outside of our theology.

Howard, the great modern American authority on divorce, agrees with this view (Evidence, Qs. 16706-13).

The Rev. Samuel Dyke in his Report (1909) of the National League for the Protection of the Family (so much quoted in the Minority Report) says :

So far as we can, we should get at the real reasons for divorce that lie back of those technically reported from the courts. *How far is it true that the ideals of a noble life lead to divorce?* How far is divorce made the means of attaining nobler social ambitions?

In the same Report he says :

The Government (Census) Report has clearly shown that there is, with few exceptions, an increase of divorce throughout the civilised world far exceeding the increase in population ;

and again (p. 9) —

Nearly the most important thing which the investigation (Cen. Rep., 1909) makes clear is that the divorce movement is everywhere a profoundly social movement that is back of law, back of religious and all educational treatment, and lying in the great social trend of the times, and of the centuries (Evidence, Q. 16821).

And yet the Minority Report (p. 175), referring to this view, remarks : " It is irrelevant to the purpose for which we have examined the precedent of the United States. We are considering not what is inevitable, but what is advisable." Surely their main argument is that it is the existence of " desertion " and " cruelty " as causes, and lax administration of the law, which have chiefly led to the great increase of divorce and collusion in America. Surely it is relevant to quote great authorities who believe there are other and deeper causes for the increase than these. And yet the Minority Report states (without citing confirmatory evidence) that " experience shows that on the whole increase of facilities and grounds of divorce leads to domestic instability " (p. 187). If such increase does not necessarily result in an increase of divorces, how can it lead to " domestic instability " ?

Again, Dr. Dyke says in the same Report :

No revival is more needed within the Church itself than a sense of its obligation to do vastly more than it is now doing for the home (Evidence, Q. 16839).

The Minority Report seems to assume (p. 187) that there has been an appalling amount of " disintegration " of family life in America due to the number of causes for divorce and lax administration. The evidence shows to the contrary and that this has occurred to only a limited extent (as it has occurred in many other countries) and that home life is as sound and as jealously guarded there as it is in England, and that where there is unsettlement or disintegration, it is due to other causes than the divorce law, *e.g.* emigration (Qs. 16813, 16681 and 23843) ; life in boarding houses ; the wider employment of women (Q. 16727) ; higher ideal of what the best family life ought to be (Q. 16701, 16829) ; and equality in sexes (Q. 23952). On this point the Majority Report says (p. 26) :

Considering this matter generally, it seems that there are so many factors to be taken into consideration in the United States, that it is not possible to argue by analogy that what may or is alleged to be the condition in that country would become so here, if further facilities for divorce were granted. It may well be that the increase in the percentage of divorce in the United States is due to conditions

which do not apply in this country, as, for instance, the ease with which marriage can be entered into (Qs. 16365-71), and immigration (Q. 16681). There can be no doubt that people, coming from countries or places where the standard of marital conduct may be lower than in the United States, when they find that other standards are there expected, and that the laws of the United States afford relief for the violation of those standards, avail themselves of the remedies which those laws afford (Q. 16699 *et seq.*). It does not seem to be established that the unsettling of family life, which is alleged to exist in some parts of the United States among certain classes of society, is due to any substantial extent, if at all, to the operation of the divorce laws; facilities for travel, increase of luxury, a growing spirit of independence, a resentment of restraint, must all be taken into account; and it may even be suggested that the increase of divorce (an increase which would appear from statistics to be taking place in other countries where there is no suggestion that the sexual and general morality of the country is low) is attributable in many cases to an appreciation of a higher standard which is required, and rightly required, in such matters (Qs. 16700-8).

Indeed it is the opinion of the best authorities who have given the profoundest study to the subject that the greater number of causes for divorce is an indication of a higher standard than that which admits of only one cause or none at all, *e.g.* Howard, the great historian of American divorce, says:

Increasing grounds for divorce means rising social ideals of what the family life should be (16697).

Mr. Justice Brown, of the United States Supreme Court, says (Q. 16729):

Who shall say that the existence of any one of these causes (including more than those of the Model Law) may not strike at the root of the marriage relation, defeat the very object for which it was entered into and render it a curse instead of a blessing? Who shall say that this practical unanimity of the forty-six States and of the most highly civilised countries of Europe should not override the sentimental consideration which opposes themselves to any dissolution of the marriage tie? . . . I cannot recall a divorce, fairly obtained, without fraud, and upon due and personal notice to the other side, that did not apparently rebound to the welfare of the parties and prove a real blessing.

Professor Lawson, a member of the Commission which drafted the American Model Divorce Law, says (Q. 23857) that if anything the standard of morality is not quite so high in States where divorce is almost unknown as in States where divorce is easy, and that "facility of divorce does not affect the morality of people but that denial of it may do so" (Qs. 23881-2, 23910). He says (Q. 23924) that the overwhelming sentiment of the American people favours the causes for divorce in the Model Law, *i.e.* desertion, cruelty, etc.

The Minority (p. 173) refer to "vagrancy" as a trivial cause. This, by statute, is defined to be equivalent to failure to provide. The total divorces for this cause is 839—one-tenth of 1 per cent., 1887 to 1906. This is also a cause in Norway (App. 43).

If correct conclusions are to be drawn from the evidence taken by this

Commission as to the state of affairs in America, it is highly important that their attention should be called to the chief parts of that evidence. Widespread attention to one side only has been called by the printing by the *Times* as news of the whole of the Minority Report. But unfortunately the summary so printed of the Majority Report, being necessarily curtailed, *contains but one sentence with reference to the American law of divorce.*

It is for this reason that I venture to offer the foregoing extracts from the evidence, and one or two further citations from the same authorities, giving the opinions of public men of the highest standing, both in England and America, who are eminently entitled to speak with authority on this grave and important matter. Without these a correct impression as to actual conditions in the United States, the causes leading to the increase of divorce and what changes are generally desired there, cannot be had. Certainly the conclusions drawn on this matter in the Minority Report are not those drawn by many eminent Americans and Englishmen themselves, as is shown by the evidence given before the Commission. It is now admitted that the statement that one in every twelve of American marriages is dissolved by divorce is totally inaccurate because of the absence for the past forty years of complete and accurate statistics of marriages in all but eight out of forty-nine States. And yet the *Times* American correspondent (December 29) reiterates this proved inaccuracy. The Census Report, p. 23, says "it should perhaps be admitted that no absolutely conclusive index of the probability of divorce has been established." And further it is explained that the proportion of one in twelve means one divorce in every twelve marriages which are *dissolved either by death or divorce* (Census Rep. Pt. I., p. 24). Most people have assumed that it meant there was one divorce amongst every twelve marriages solemnised. As to what proportion of such marriages are in fact dissolved by divorce, there is *no evidence whatever*—another "American Divorce" bubble burst!!

The Minority Report states (p. 173) that divorce may be granted in the State of Washington "whenever the judge is satisfied that for any cause the parties can no longer live together." This is a grave inaccuracy. The statute reads that divorce may be granted "for any other cause deemed by the Court sufficient *and* the Court shall be satisfied that the parties can no longer live together." The Supreme Court of that State in *Wheeler v. Wheeler*, 80 Pac. Rep. 762 (1905), considering this, said:

This section does not say, and was not intended to mean, that the mere fact that the parties can no longer live together is sufficient upon which to base a decree of divorce. According to the plain wording and meaning of the section, there must be some cause other than those stated in the section deemed by the Court sufficient and in addition thereto the Court shall be satisfied that the parties can no longer live together.

As to other "trivial causes," the Census Report, pp. 78-83, shows that from 1887 to 1906 there were 411 divorces or less than one-tenth of 1 per

cent. of all divorces granted for incompatibility of temper (admittedly not now a cause), and but 432 for attempts on spouses' life; and only one case of divorce for intolerant religious belief, and only two per cent. of all divorces were for an "unknown cause."

This statute and these figures were in the Census Report which the Minority had when they drafted their Report, giving these as sample causes for divorce in America.

May we not have accuracy and a due sense of proportion in any further criticism of American Divorce Laws?

Again, the Minority, arguing from the alleged "scandalous" condition of society in America, say (p. 174):

So marked has been the decay of home life and family ties in modern times in America that a "National League for the Protection of the Family" was formed about thirty years ago, the special aim of which is "the improvement of public sentiment and legislation to protect the institution of the family, especially as affected by existing evils relating to marriage and divorce."

They strangely omit to state that the Report of that Society for 1909, signed by the Rev. Dr. Dyke, showed its receipts were less than £405 collected from but 147 contributors, and in 1911 the receipts were less than £350 from but 125 contributors. One of the most generous nations in the world can scarcely be as convinced, as this Minority apparently is, of the "decay of home life," when so insignificant a number contribute such an infinitesimal amount to such an important object. It might as well be said that there has been such a marked "decay" in English home life that it was found necessary to found the Mothers' Union. The fact is this Society had to admit its error after it had agitated for a Congress on Divorce Reform (largely because of the supposed great numbers of divorces obtained fraudulently by persons going to some State other than their real domicile—migratory divorces). For the Census Report showed (p. 34) that such divorces were "a comparatively small proportion of the total number."

The fact appears to be that the Minority, as well as this Society, have come too much under the spell of their own zeal to accurately judge the real situation in America. That their opinions are not shared by the majority of present-day Americans is proved conclusively by the following extract from the article of the American correspondent of the *Times* published on December 27 last:

In spite of the confidence with which the Minority Report of the Divorce Commission adduced American opinion as well as American experience to support its conclusions, transatlantic comment, so far as it has become articulate, sides strongly with the Majority. *Even the "Outlook," in the direction of whose policies Mr. Roosevelt has great influence, and which, originally a Church organ, still pursues its Liberalism in the Gladstonian manner, states that it "agrees without any qualification with the fundamental proposition of the Majority of the Commission."* The *Boston Transcript* and the *Evening Post*, both of which Americans

are fond of citing as conspicuous examples of journalistic conservatism and sanity, take equally strong lines. The *Boston Transcript* praises the Majority Report for showing "just that same thoughtful, well-considered temper—courageous innovation governed by due caution—which the jurists of the world have long and rightly been accustomed to expect from the law-makers of England"; and attacks the Minority for the way in which it thinks they have been actuated during the hearing, and in the formulation of their report, by the fallacy that the "absence of demand for divorce among the poor was due to some other cause than the knowledge that divorce was beyond their reach." The *Evening Post* notes with approval the concurrence of the Minority in the necessity for certain changes and improvements in the English marriage laws, but thinks that the Minority do not go far enough. Their attitude over insanity, for instance, partakes to its mind of the nature of a quibble. Nor does it believe that the adoption of the Majority Report would lead to a flood of scandalous divorces. Like the *New York Times*, it quotes in this connection Dr. Dyke, the corresponding Secretary of the League for the Protection of the Family, whom the Minority Report cites in substantially the opposite sense, to the effect that at first there would be an increase in English divorces, but that very soon the number would settle back to little above what it is now. "That would imply that the remedying of a few cases of flagrant injustice would not seriously affect the general English opinion on the sanity of marriage." So much for the representatives of the more enlightened Press. . . . On the other side there is of course the clerical view and what seems at present to be a very small minority of conservative lay opinion."

Can there be better proof that the conclusions of the Minority are neither supported by the American evidence before the Commission nor by the opinion of "those on the spot"? And yet it is upon their view of the "scandalous" state of affairs supposed to exist in America that a large part of the Minority's objection to the proposed reforms rests.

The Minority say (p. 175):

We are bound to recognise that the two countries have too much in common to make it probable that if we in England adopt what are substantially the American grounds of divorce we shall escape the grave disasters which have admittedly followed their adoption in the United States.

The obvious answer is that "grave disasters" have not "admittedly followed" the adoption of these causes in America; for *the Commission on Uniform State Laws, which carefully considered all necessary reforms of the divorce laws, retained every one of the causes for divorce suggested by the Majority Report, except insanity.*

The fact is that there have been far too much rhetoric and exaggeration applied to the divorce situation in the United States by enthusiasts who do not recognise that there are abuses of the divorce laws in every country, whatever those laws may be. Collusion will always take place, and it is idle to suggest that it is very much easier where there are many causes than where there is only one. Agreements to commit, or to appear to have committed, even the gravest offences are scarcely more difficult than in the case of those less grave. But in any case the proportion of collusive divorces must be

exceedingly small in proportion to the total number of divorces. The position of the Minority is that it is better for nine innocent persons to suffer than that one guilty person should procure a fraudulent divorce.

The rate of increase of divorces is greater than the increase of population in practically every civilised country. As suggested by the Rev. Dr. Dyke, one of the reasons for this is that "the divorce movement is everywhere a profoundly social movement that is back of law . . . lying in the great social trend of the times and of the centuries" (16821). He further says :

No revival is more needed than the revival within the Church itself of the sense of its obligation to do more than it is now doing for the home. The Church does not yet see that it can inspire the home to that conduct and to those virtues that are the surest protection we have against poverty, ignorance, vice, and crime.

The Minority have made a strong and praiseworthy effort to maintain their view of divorce, but they totally fail to fortify their position by any substantial amount of reliable American evidence, the weight and amount of which is conclusively against their contentions. For notwithstanding some grave abuses and an undue amount of divorce, the opinion of the Commissioners on Uniform State Laws, of the majority of twenty-eight Presidents of Bar Associations throughout the United States, and the bulk of American opinion as expressed in the public Press, is overwhelmingly in favour of the causes for divorce recommended by the Majority of the Royal Commissioners.

LEGAL EDUCATION IN THE UNITED STATES.

[*Contributed by* PROF. W. HARRISON MOORE.]

DURING my leave from the University of Melbourne in 1911, I took the opportunity of visiting the United States in order to see the Law Schools at Columbia University (New York) and at Harvard. My object in going to America was to make acquaintance with the "case system" of law teaching, which is the principal feature of legal education as carried on in these schools.

I spent about four weeks in New York and Boston, dividing my time equally between the two. The time, of course, was short; but as I had no purpose in visiting America but to see these schools, I was careful not to allow myself to be distracted by the many interesting objects and problems of American life and American universities; and I found that I was able, in the time at my disposal, to form a very definite opinion about the work I saw. This was only possible, of course, by the kindly co-operation of the staff at Columbia and Harvard, of whose courtesy I shall always have the most grateful recollections. Fortunately for me, they were evidently accustomed to visitors on similar quests. I was taken in charge by Mr. Kirchwey at Columbia, and Mr. Thayer at Harvard (they are both professors, but it is not the custom at Columbia or Harvard to use the term as a title), who, in mapping out my course, were anxious to secure that I should see as many different styles of teaching as possible. I must acknowledge, also, the courtesy of the students, amongst whom I sometimes sat—I nearly always found a copy of the case-book put at my disposal by some neighbour, and in many small and unobtrusive ways they made me their debtor. I attended classes of nearly every member of the staff in residence at each university, and I had opportunities of discussing matters with them at various times. At Harvard, I was present at a meeting of the Faculty.

The case system, it should be explained, consists in the exclusive teaching of law through discussion in class of decided cases. For this purpose case-books have been prepared, consisting of a careful selection of leading and illustrative cases upon the subject of each course. They are quite different from the selections of leading cases with which English

lawyers are familiar, by the greater number of cases they contain and the absence of all notes. Their aim is to collect such a number and selection of cases as would form the material for a text-book on the principles of the subject ; and the declared purpose is to enable and require the student who has read these cases and heard them discussed, to make his own text-book, instead of reading a text-book, or having one made for him by a lecturer's exposition reproduced in a note-book. In theory, therefore, neither text-book nor formal lecturing enters into the course.

The students are required to read ahead of the class work, and the fifty minutes' class may range over twenty pages or more of the case-book. (Incidentally, it may be mentioned that the full reports in the case-book enable the students for the bulk of their work to dispense with the reports in the library—a very important matter, so far as wear and tear is concerned.) The professor, on taking his seat, calls on some member of the class by name to give an account of a case, and care is taken by the instructor that the statement shall be of such a kind, and in such a form, as shall in the clearest manner exhibit its *ratio decidendi*. This, in itself, is admirable practice. The statement is followed by close examination of any questions left undecided or suggested by *dicta*, by comparison with other cases, and often by criticism ; these last features are facilitated, of course, by the frequent divergence of State jurisdictions. The professor does not hesitate to press the students hard, and it was very interesting to notice the different manners of both professors and students at this stage. Some men, whom I thought to be rather severe, were, I was told, among the most successful teachers ; certainly students responded *con amore* in some instances. Sometimes the professor will heckle a single student for ten minutes or more before he passes on to some one else.

The system obviously has great merits. The student studies his law from the outset as he will have to study it for purposes of argument in court. He acquires familiarity with legal method, and with the process of legal development ; he gains great facility in the use of his materials ; he gains confidence, a critical habit of mind, and independence of thought ; and his studies are carried on in the stimulating way of contest with his fellows and his instructor. On the other hand, in the very large classes I saw (none, I think, with less than a hundred members) only a very small proportion can actively take part in the discussion during the allotted fifty minutes. Moreover, I found that the same students appeared prominent in several different classes, and I learnt that in practice there was a tendency for the discussion to fall into the hands of the professor and a comparatively small number of members of the class. To the objection that this impaired the value of the system, one was told that, at any rate, the men who took part in the discussion got the benefit of it, and that those who did not had the advantage of hearing it, and were certainly no worse off than if they had had the law expounded by a lecturer without discussion. Certainly the de-

meanour of a large class indicated close attention—there was no appearance of listlessness or boredom in the audience. The relative parts of instructor and student in the class were amusingly illustrated in one instance by the remark addressed to me by a student (who did not know that I was a visitor), that the instructor was “a great man to talk”; indicating thereby his assumption that talking was not an essential part of the professorial office.

Against the advantages I have described must, I think, be set the fact that the discussion must often leave a large number of members of the class in a good deal of doubt as to what really is settled in the law. I have already remarked on the tendency of the discussion to fall into the hands of the abler men in the class; and a very little experience and reflection shows that this must be so. Discussion which would demonstrate everything to the duller intelligence would be hardly tolerated by the keener intellects, and would require an immense amount of time. In many respects the system recalls tutorial tuition, with the relation between an Oxford tutor and his best men, and just in so far as it does this it makes one doubtful of its aptitude, or, at any rate, sufficiency, for class work, except amongst selected men. The discussion soon reaches difficult and doubtful problems; and when the subject was one with which I was not familiar I several times left the room without a clear notion of what was settled law in the matter. Of course, the diligent preparation of his cases by the student ought to obviate some of this danger; but it does not, I am convinced, avoid it altogether. In some cases instructors recognise the position by a short expository address, either at the beginning or at the close of the class, of which the students take diligent notes. It seems to me likely that this practice will grow, and that the result will be a system which combines the “case method” with expository lectures. There are, indeed, some subjects of English law to which the “case method,” pure and simple, cannot be applied. Real Property is the most notable instance of this, and here one finds that the instructor does practically encourage his class to read, or even uses, in the class-room, well-known text-books.

Almost without exception I found that those employing the case system were sufficiently persuaded of its advantages to claim for it a permanent place in legal education. They were all agreed, however, that it is founded on certain assumptions. The first of these is a certain maturity on the part of students. At Columbia and Harvard every law student is a graduate either of the university itself or of some approved university or college. The second is a sufficiently large staff. Harvard has a staff of nine professors, one assistant professor, and five lecturers in law; Columbia twelve professors and three lecturers. This enables the course to be directed to much smaller departments of the law than with us. Thus, by way of illustration, instead of one course on the Law of Contracts and Personal Property, there are, at Harvard, full courses on Contracts and on Agency in the first year, on Bills and Notes, on Insurance, and on Sales in the

second year, and on Partnership, on Suretyship and Mortgage, and a half-course on Quasi-Contract in the third year.

The third requirement is ample time. The law course at both Harvard and Columbia is a full three-year course, following upon a "college" course corresponding with our B.A. course. In the second and third years the student has some choice of subjects, and at Harvard the subjects of Roman Law, Administrative Law, International Law, Jurisprudence, and the History of the Common Law—all of them subjects dealt with more or less in our course—are postponed to an optional fourth year. Even with the apparently liberal allowance of time courses are not infrequently unfinished at the close of the session. If time is thus required for the student, it is recognised that it is not less necessary for the staff. The method is very exacting; the precise lines that discussion will take cannot be foreseen; the instructor has to be prepared, like counsel in the conduct of a case, for emergencies; and, however well he may be versed in his subject, and however carefully his work may have been done in the laying out of his course, each meeting of the class must be preceded by very careful examination and consideration, not merely of the cases to be discussed, but of what one may call the marginal cases—those that lie near to the matter in hand. In the case of professors giving substantially their full time to the work of the school six or seven classes of fifty minutes is the time assigned to actual class teaching in each week.

It seems to me that, in the familiar academic contest of *Method in Teaching* and "*Learning to Learn*" v. *Imparting Knowledge*, the first is rather over-emphasised in the case system, and I was very much disposed to agree with suggestions that the advantages which the case method admittedly has could be sufficiently secured by its exclusive adoption in one or two subjects—one, at least, should be in the first year—and that the rest of the course might be pursued with a more liberal use of the text-book and the expository lecture.

There is another aspect of the case system which demands serious attention, though it belongs, perhaps, more to the scope than the methods of legal education. We know on good authority that debate makes a ready man, and that the legal method of detail makes men cut deep. But we know also that it has not a tendency in the same degree to make them take broad views. Now, it seems to me that a system of education resting exclusively upon the study of cases tends to exaggerate the logical side of the law, to consider it too exclusively on its formal side, to over-emphasise the consistency and harmony of the law. These are dangers to which the lawyer is prone, and which, time and again, have manifested themselves in history. As professional thought is one of the principal factors in legal development, this stamps itself upon the law, with the result that the law may become less and less an instrument for accomplishing present social ends, and more an institution to the needs of which social ends themselves

must be adapted. In other words, we get a point of view which may be described, with not more than the usual amount of polemical exaggeration, as one according to which law does not exist for society, but society for law.

This state of things will speedily produce sterility in the natural development of law; it stifles the sense of public duty in the profession of the law, and excites jealousy and suspicion of law and lawyers on the part of the public. The failure of the law to adapt itself to the needs of the community probably stimulates an unhealthy activity in the legislature, which in turn is regarded with distrust and dislike by the Bench and bar. There is thus a want of harmony between the law-making and administration of the law. Now, in America, one cannot fail to be struck with the cleavage between the law of the courts and the law of the legislature (in spite of the activity of lawyers in politics), and the result is seen in the wave of "recall" politics which is passing over the country, and which has attained world-wide notoriety since Mr. Roosevelt determined to ride on it. There are, of course, many reasons for this conflict, which I have no desire to touch on here. But something, and probably a good deal, rests on misunderstanding between the parties, and the misunderstanding is not wholly on the side of the public.

Law and politics, indeed, are not one, nor are bench and bar legislators. Nevertheless, opinions as to the end and purpose of government and of laws are amongst the sources of our law, which, in one form or another, find common expression in judicial decisions. In America the wide range of constitutional law brings these opinions before the student with great frequency; and he thus acquires, in his legal education, a political bias which carries him very far from the current views of the day. Judgments which are frankly based on political doctrines which were orthodox in the eighteenth century, but are now branded as "conservative" or "reactionary," widen the breach between profession and public; they sometimes very seriously impair the understanding of legislation.

In discussing this position with a member of the Columbia University staff, I suggested that the case system might accentuate the evils of which we were speaking, and he was very emphatic that it had such a tendency, unless it was corrected. The correction that was attempted at Columbia was to link as closely as possible the study of the law with political science, and particularly to encourage the pursuit of economic and sociological studies by those who are intending to practise or to teach law. The publication, a few years ago, of Professor Dicey's *Law and Opinion in England*, and more recently, of Professor Jethro Brown's *Underlying Principles of Modern Legislation*, both the works of experienced teachers of the law, points to a recognition of the same needs in England and in Australia. It seems also significant that the publication of translations of a selection of European works on the Philosophy of Law is being undertaken, under the direction

of a committee of American Professors of Law, while the papers of Professor Roscoe Pound, of Harvard, in the *Harvard Law Review*, and elsewhere, on "Sociological Jurisprudence," promise a work with an outlook of profound interest to every English lawyer, and one which may exercise a great influence over the teaching and ultimately, therefore, over the development of the law.

PROBLEMS OF ROMAN CRIMINAL LAW.

[Contributed by W. D. ASTON, ESQ.]

I.

THE criminal law of ancient Rome interests both classical scholars and jurists, but for very different reasons. Scholars, attracted to the subject perhaps in the hope of gaining light upon Roman social habits and political institutions, must find the task of reconstruction a perpetual and exhilarating challenge to their learning, their judgment, and their acumen. Jurists, as a rule, can only accept with gratitude the results of the others' labours; for them the main interest lies in the actual contents of the system itself. Jurisprudence sees the problems of the criminal law as problems remaining fairly constant in all countries and all ages, concerning the adaptation of means to ends; in this domain it is the comparison of one set of solutions with another which holds the attention. Some five years ago a learned Belgian advocate, M. H. Speyer, pointed out a number of striking analogies between the English jury system and the Roman criminal procedure at its stage of fullest development—*i.e.*, under the *régime* of the *Quæstiones Perpetuæ*; and also remarked that the judicial institutions of the other countries of Europe, in which the governing method is "inquisitorial" and the jury exotic, descend, not from that stage of Roman history, but from later Imperial times when the constitutional guarantees of liberty had been destroyed.¹ This resemblance, rendered only more noteworthy by the absence of any filial relationship between the English and the Roman systems, gives to the Roman criminal law a peculiar claim upon the attention of English legal students.

Although the subject thus concerns jurists and scholars alike, good work upon it demands a combination of the gifts and attainments of both classes of men. Such a combination we are accustomed to illustrate by the great names of Mommsen, of Girard, and of Greenidge. Mommsen's *Römisches Strafrecht*, published in 1899 in completion of his earlier *Staatsrecht*, has laid a foundation upon which all future writers must build; and Girard's *Histoire de l'Organisation Judiciaire des Romains* (1901), so far as it has yet appeared,

¹ "Le Jury à Rome et en Angleterre," H. Speyer, *Law Quarterly Review*, October 1907.

is a worthy continuation of Mommsen's labours. The late Mr. A. H. J. Greenidge's work on *The Legal Procedure of Cicero's Time* brought Roman judicial institutions, civil and criminal, at perhaps the most interesting point of their history, before the notice of English readers; this enduring monument of Oxford scholarship will perpetuate the general regret for its author's early death. A recent work of great distinction and merit, likewise proceeding from Oxford, and dedicated to Greenidge, makes it plain that another name, by no means unknown before, must be added to the list. Mr. J. L. Strachan-Davidson's *Problems of the Roman Criminal Law*¹ has developed out of a criticism by the author of Mommsen's *Strafrecht* in the *English Historical Review* for April 1902; and is to be regarded "as, in the main, a supplement to Mommsen." Accordingly it does not purport to give a full and systematic account of the whole subject. It is in effect a discussion of many-urgent problems and difficulties which confront the student in this department of learning; a discussion always exhaustive, temperate, illuminating, judicial. Whether or not the reader accepts all the Master of Balliol's conclusions, he will at least agree that in every case the author draws firmly that line between evidence and opinion which, as he shows in the course of the book, was so conspicuously lacking in the Roman procedure itself. In spite of the supplementary character of the work, it is possible to piece together from its pages a connected story; the main features of which we propose to set forth, premising that our interest is juridical, and professing no competence to discuss the various questions of critical scholarship which arise.

In the regal period there was a close connection between law and religion, and the justification for capital punishment was found in regarding it as a sacrifice designed to avert from the community the wrath of an offended deity. The king united in his person the capacities of chief pontiff and chief magistrate—both of which are regarded by Ihering as "accretions on an original status of commander-in-chief." The penalty imposed on the most heinous offences known to the law—striking a parent, defrauding a client, removing a boundary stone, slaying a plough-ox—was *sacratio capitis*.² It is natural to suppose that the "homo sacer" was offered up by execution with the sacrificial axe before the altar of the gods; yet Festus, epitomising Verrius Flaccus the Augustan writer, after defining such a man as "quem populus iudicavit ob maleficium," added "neque fas est eum immolari, sed qui occidit parricidii non damnatur." Mommsen, holding that *sacratio* was a public execution, for the infliction of which a regular judicial sentence was

¹ *Problems of the Roman Criminal Law*, by James Leigh Strachan-Davidson, Master of Balliol College (Clarendon Press, 2 vols.: vol. i. 245 + xxi pp.; vol. ii. 287 pp. 18s. net).

² "Sacratio" and "sacer" are etymologically connected with "sanctio," which originally denoted the act of commanding under penalty, and was later used of the penal clause in a law. The author suggests that it meant also the penalty itself; though Prof. Clark will not admit that this modern sense can be found in the Roman law. See his *Practical Jurisprudence*, p. 133. Cf. Mommsen *Strafrecht*, p. 901, n. 5.

always necessary, interprets Festus as meaning that, while the private slaying of the culprit involved no punishment, yet, on the other hand, it was not right or proper for him to be put to death otherwise than by the patrician magistrate. Mr. Strachan-Davidson points out that the Latin will not bear this construction; Festus says plainly that it is not right (*i.e.* for any one) to offer up the offender as a sacrifice, though, on the other hand, any one may kill him with impunity. This clearly points to outlawry rather than to public execution as his doom. Still, there are indications that in early times public execution was regarded as a sacrifice—*e.g.* the presence of the axe, the sacrificial implement, in the magisterial *fascēs*, and the nocturnal harvest-thief whom the Twelve Tables ordered “*suspensum Cereri necari*”—and it is difficult not to connect it with *sacratio*.

The author's explanation of the inconsistency is that originally the sacrificial axe was the normal due of the offender; but should he by some accident escape this execution, then each man's hand would be armed against him.¹ Under the Republic the civil and the ecclesiastical powers were separated, and capital punishment lost its connection with ritual religion. “The axe ceases to have any sacral significance, and becomes merely the symbol of unrestricted *imperium*.”² Thenceforth the term *sacratio* was not used of the ordinary death penalty, but was specially applied to that doom of outlawry which was the only possible sanction where for some reason regular legal proceedings were not feasible; for instance, fraud on a client, or some breach of those general constitutional understandings which underlay the ordinary law, *e.g.* a violation of the tribunician *Sacrosanctitas*, or an attempt to arrogate monarchical power. In such cases condemnation before a legal tribunal could not be a necessary condition of the penalty. Hence “the killing unavenged of the *homo sacer* . . . survives in precisely that form of execution which is furthest removed from any primitive ritual of sacrifice.” Verrius Flaccus, then, writing at a later time, meant to repudiate the barbarian notion of sacrifice, while laying stress upon the outlawry which had been, historically speaking, only its consequence; and his phrase “*quem populus iudicavit ob maleficium*” must be taken to refer to the regular judicial sentence which had been originally the normal source of that doom. It may be noted that though *sacratio* itself was extinct by the time of Verrius Flaccus, outlawry under the new name of “*aquæ et ignis interdictio*” had before then become the general punishment inflicted by the *Quæstiones Perpetuæ* for criminal offences.

When with the divorce of law from religion it became for the first time possible to discriminate between a legal wrong and a sin, the conception of

¹ His soul was owing to the gods “and therefore might be stripped of its body, and sent to them as soon as possible”: Macrobius, *Saturnalia*, iii. 7. 5, quoted Strachan-Davidson, i. 8, 9.

² It was removed altogether from the *fascēs* under the Empire, when the sword was substituted for it. Strachan-Davidson, i. 102 n. 3.

crimes as a specific class of legal wrongs still remained lacking to the Roman State. Maine, to whom the author refers in terms of deep gratitude, had the provisions of the Twelve Tables in mind when he wrote that "the penal law of ancient communities is not the law of crimes; it is the law of wrongs, or, to use the English technical word, of torts." It is probably more exact to say of the early Roman law, as Mr. Jenks says of the early English law, that "it is a law which, with rare exceptions, recognises merely the root idea of a *wrong*; it does not distinguish between crime and tort."¹ The Roman system, like the English, first allowed, and then regulated, a self-help which it was powerless to prevent. The *legis actio sacramenti*, the parent of all the civil actions, including the actions of delict, arose in this way, as a legal outlet for the impulse of private vengeance. Under the Twelve Tables, in cases where death was, exceptionally, recognised as the penalty of a private suit, e.g. perjury, or *Furtum Manifestum* committed by a slave, the offender was flung from the Tarpeian rock—"a primitive form of lynch law." The Twelve Tables again allowed *talio* for *membrum ruptum*, though they were able to prescribe pecuniary penalties for *os fractum* and other minor bodily injuries²; while Sextus Cæcilius argued that even the *talio* could be exacted only where the culprit failed to offer proper reparation.³ In the same way, the Anglo-Saxon law-giver, pressing upon the party wronged the acceptance of a pecuniary *wergild* in lieu of blood revenge, required him to demand "right" of the offender before proceeding to enforce vengeance.⁴ At such a stage of legal development the attitude of the State towards the wrong is simply one of reprobation for a breach of customary morality. The fact that the penalty prescribed is exacted at the instance of the party wronged does not mean that the law aims specifically at redressing the latter. It is simply unable either to take the whole work of punishment into its own hands or to restrict injured persons to the recovery of actual compensation. It is therefore not yet in a position to discriminate between offences against the State, which ought to be punished, and wrongs against individuals, for which compensation is the appropriate remedy.

We have, however, all the while to reckon with the magisterial power, which at Rome originally vested in the king, and devolved after the institution of the Republic upon consuls, prætors, tribunes, and other officers. This power, the *imperium merum*, defined by Ulpian as "*habere gladii potestatem ad animadvertendum in facinorosos homines*" (though an earlier

¹ See Jenks, *History of English Law*, p. 14.

² "*Si membrum rupit, ni cum eo pacit, talio-esto*," etc. It is hard to say what was the precise distinction between *membrum ruptum* and *os fractum*; perhaps the relationship was the same as that formerly existing in English law between Mayhem, i.e. the deprivation of a fighting member, as an eye or a front tooth, and other kinds of bodily harm, e.g. the loss of an ear or a jaw-tooth. Cf. Muirhead, *Roman Law*, p. 439, n. 3.

³ "*Ni cum eo pacit*." But the author thinks that "at first the decisive word lay with the injured man" (i. 43).

⁴ Jenks, *History of English Law*, p. 8.

generation would have substituted the axe for the sword), was in fact the very foundation and mainspring of the public penal law. It was that 'control of the organised force of the community' which plays so large a part in discussions of the Austinian theory of sovereignty. Very early it was brought to bear, in isolated cases, "upon those whose action was endangering the safety or order of the State"; and the magistrate seems to have had a free discretion to name whatever punishment he pleased for any offence. It was doubtless first exerted in cases of treason (*perduellio*)—in ancient Rome a very elastic offence, as it was in England until 1352—and murder (*parricidium*). Early in the Republic the latter offence was dealt with by standing officials, the *quaestores parricidii*, who were identical with the urban quaestors of historical times¹; while for treason special *duumviri perduellionis* were appointed as emergency arose.² But the general magistrates would use their power in order to deal with any kind of misbehaviour which appeared to threaten the interests of the State. They would condemn the offender, subject under the Republic to appeal to the Comitia; so new offences would be created which would in the end become objects of regular prohibitory legislation. Before long not only were wrongs directed against the State, such as sacrilege, *peculatus* (stealing public cattle), and injuring public roads and buildings, added to *Perduellio*; but, as the Twelve Tables show, offences like arson, witchcraft, and nocturnal corn-stealing—all of which primarily affect individuals—were added to murder, as being acts which in self-defence the community itself ought to punish, and to punish by death. In this way grew up a regular class of public offences.

Meanwhile, as regards purely private wrongs, the system of self-help gave place, first to equivalent penalties, as explained above, then to estimated damages, recoverable by action before the appropriate tribunals. Thus, in the case of *Injuria* (including Assault), Labeo tells us that under the Edict the fixed penalties of the Twelve Tables were replaced by an assessment of damage³; and no doubt the exaction of the private *talio* had ceased long before this. In the purely compensatory action for damages we reach the typical civil remedy. But traces of the old undifferentiated system, with its 'bilaterally penal' sanction, remained visible right down to Justinian in the penal actions for delict; most obviously in the four-fold penalty for *Furtum Manifestum*.

It is a little puzzling to a jurist to be told by Mr. Strachan-Davidson that the Roman delicts were really part of the *criminal* law, and we are not quite sure that he is justified in citing Mommsen as authority for that

¹ And not separate officials as is commonly supposed. Strachan-Davidson, i. 152, n. 2. Later their functions were adopted by the *tribuni plebis*. (*Ibid.* i. 153.)

³ "Prætores postea hanc (legem) abolescere et relinqui censuerunt, injuriisque æstimandis recuperatores se daturos edixerunt": Labeo apud Gellium, Noct. Att. xx. i. 13, quoted Strachan-Davidson, i. 44, 45.

statement.¹ Mommsen says indeed that the mere word *crimen* sometimes included the delicts, though more commonly it was used of the public offences.² He also suggests that the traditional division of the Roman system into Civil and Criminal Law has neither authority nor utility to support it.³ But he fully admits that a distinction between public and private wrongs ran throughout that system; and contends, not that the delicts were part of the public penal law, but that the very distinction itself, being grounded solely on procedure, was arbitrary and accidental. This is clearly expounded by Mr. Strachan-Davidson, who sets forth Mommsen's view that all wrongs visited by punishment—in which term must be included even 'unilaterally penal' damages, where, exceptionally, these alone were conceded⁴—presented "the fundamental characteristic of a moral law broken and a reparation prescribed therefor by the State." Thus *Furtum*, the object of a private penal action, cannot well be divorced from the public offence of *Peculatus*, nor did *Injuria* change its nature according as it was pursued by public or private proceedings. That this essential identity was at least perceived, even though never fully expressed, by the Roman jurists themselves, is suggested by the (probably late Republican) legends of an original unity of the penal law preceding the institution of private *judices* by Servius Tullius. Mommsen reinforces his rather vague ethical criterion of penal law by the legal test that penal liability did not descend upon the heir, while contractual liability did.⁵

On the whole Mommsen, happy in the possession of the German word *Strafrecht*, properly covering the whole penal law, takes care to avoid speaking of "criminal law." If the Roman system contained no definite conception of Crime, the statement that the delicts were part of the criminal law would have meant little to a Roman jurist. On the other hand, if we turn to the distinction between publicly and privately pursued wrongs which forms the groundwork of the English jurist's conception of Crime, we may agree with Mommsen that an essential unity underlay the distinction, without regarding the private wrongs as really part of the public penal law. In short, before the differentiation there was no "criminal law"; after the differentiation the delicts could not have formed part of that law. We could

¹ Strachan-Davidson, i. 39: "Mommsen rightly refuses to allow the differences of procedure to obscure the essential fact that such trials (*i.e.* for delicts) are really part of the criminal law."

² *Strafrecht*, p. 10. It originally denoted the charge rather than the offence itself, but in later Latin was often used of the offence, in which sense it has come down to modern law (p. 10, n. 1).

³ Cf. *Strafrecht*, p. 525: "Wenn dabei von der hergebrachten weder quellenmässig begründeten noch systematisch brauchbaren Scheidung des Civil- und des Criminalrechts abgesehen ist."

⁴ See *Strafrecht*, p. 14, n. 1.

⁵ The author attributes this observation to Hitzig's critique of the *Strafrecht* in the *Revue Pénale Suisse*, 1900, p. 189; but Mommsen himself emphasises it in several places, *e.g.* pp. 6, 14, n. 1, 66, 524. It is hardly necessary to mention that a similar principle exists in English law.

parallel the author's statement by an assertion that in the Roman system the crimes were really part of the law of delict; but in truth the two classes of wrongs were probably co-ordinate, deriving an equal descent from a common ancestor. It seems therefore desirable, for the sake of clearness, to restrict the phrase "criminal law" and connected terms to the public portion of the Roman penal law.

The criminal law in this sense grew out of the magisterial Imperium, not, as Maine supposed, out of the practice of legislating specially against persons who had done injury to the interests of the State.¹ The earliest tradition of Roman procedure is embodied in the mythical trial of Horatius, when the king is said to have appointed duumvirs "qui Horatio perduellionem judicent," and to have provided for an appeal from their sentence. In all such cases arising under the Republic the part played by the Comitia was that of a court of appeal from the magistrate's sentence. Penal legislation directed against individuals was indeed specifically prohibited by the clause of the Twelve Tables, *Privilegia ne irroganto*, and authentic Roman history gives no suggestion of any process equivalent to an Act of Attainder. The tribunes alone, of all the magistrates who figured in criminal trials, had the power of proposing legislative measures; and the process of legislation differed considerably in its incidents from the regular criminal procedure.² Maine, in short, confused the appeal to the People which was expressly furnished in all capital cases by the Lex Valeria 509 B.C., *i.e.* at the beginning of the Republic, with the law-making function of the Comitia.

Whether by the Lex Valeria itself or by the Lex Aternia Tarpeia of 454 B.C., the appeal against the death penalty was early extended to sentences of fines over a certain maximum limit (*multa maxima*). Mommsen and Girard, however, held that the maximum thus established was absolute, and did not merely form a limit for 'non-appealable' sentences, so that the magistrate could not impose fines in excess of the fixed amount, even subject to appeal; that is, until (as these writers suggest) a change in the conception of the *multa maxima* was effected at the time of the Licinian Rogations in 367 B.C. Mr. Strachan-Davidson argues strongly against this view, which is unsupported by any ancient authority. Accordingly he interprets the common phrase "irrogare multam," not as implying the initiation of legislative action by the magistrate for fines over the maximum,

¹ Maine's *Ancient Law*, p. 372: "When the Roman community conceived itself to be injured, the analogy of a personal wrong received was carried out to its consequences with absolute literalness, and the State avenged itself by a single act upon the individual wrong-doer. The result was that, in the infancy of the Commonwealth, every offence vitally touching its security or its interests was punished by a separate enactment of the legislature."

² "Though the *promulgatio* over three market days is common to both procedures, there is nothing in the legislative process answering to the triple *inquisitio* or *accusatio* which in the judicial process is preliminary to the *promulgatio*": Strachan-Davidson, i. 133. As to the details of the criminal procedure itself, cf. *ibid.* 154 *seq.*

but merely as referring to the circumstance that, in supporting his sentence upon the appeal, the magistrate would be obliged to "ask" the people to confirm his infliction.¹ Later, "irrogare" came to mean simply "to inflict," and the word then ceased to be restricted to cases of fining.

For fines, the limit of the magistrate's absolute authority was fixed at 3,020 asses. The magistrate had also a number of other powers of summary punishment, of which the exercise did not give rise to appeal—*e.g.* imprisonment, execution against chattels (*concidere pignus*), expulsion from Rome (*relegatio*), and perhaps flogging until the Porcian laws. These summary powers were said to make up his *Coercitio* in the strict sense of that term.² There were other limitations on the Right of Appeal. Thus it did not extend to aliens; nor at first even to citizens outside the walls of Rome itself. Cicero wrote (*de Legibus*, iii. 3. 6): "*Militiæ (i.e. outside Rome) ab eo qui imperavit provocatio ne esto.*" The author, however, follows Mommsen as against Greenidge in holding that Cicero was here stating, not the law of his own time, but the law as it was before a *Lex Porcia* carried by Cato the Censor or a *Lex Sempronia* somewhat later gave world-wide validity to the citizen's privilege. It was this privilege which St. Paul asserted when, in a famous instance, he appealed unto Cæsar from Festus the Governor.³ Mommsen contends also that the privilege did not extend to women, since they had no vote in the *Comitia*; but the author has no difficulty in showing that it was in fact allowed to them.

There were again certain particular crimes where no appeal was allowed—*e.g.* infringement of the tribunician *Sacrosanctitas*, seduction of Vestal Virgins, and international and military offences. Further, exceptional circumstances might suspend the right. One instance was the appointment of a dictator. Apart from this, in cases of grave public danger we find the *Comitia* or the Senate intervening and issuing commissions to magistrates for the trial of offenders without appeal, a procedure somewhat analogous to the suspension of the *Habeas Corpus* Acts by an English Parliament. The fetter imposed by the *Lex Valeria* on the magistrate's action could obviously be removed by another *lex*; but the toleration of its removal by a mere *Senatus consultum* could only have been induced by urgent necessity. When the Senate attempted to apply the procedure to political offenders, it was promptly shorn of its power by a law of Caius Gracchus "*ne de capite*

¹ Cf. Cicero, *de Legibus*, iii. 3. 6: "*Quum magistratus judicassit irrogassitve, per populum multæ poenæ certatio esto*"—which the author translates: "When the magistrate has pronounced sentence, whether of death or fine, let the question be tried out before the people." Strachan-Davidson, i. 178.

² See Strachan-Davidson, i. 97-100, for the two meanings of *Coercitio*, and for Mommsen's doctrine, which the author rejects, that when strictly used it would include all 'non-appealable' sentences, whether inflicted under the summary jurisdiction or not—*e.g.* a death-sentence upon an alien.

³ Acts of the Apostles, xxv. 10-12. By this time, of course, the Imperial Tribunal had taken the place of the *Comitia* as the final Court of Appeal.

civis injussu populi judicaretur.” Yet it managed to evade this prohibition by means of the doctrine that in empowering the magistrates to deal with traitors it was not authorising a judicial proceeding, but putting in force a right of war against enemies. It would therefore simply decree “that the consuls were to see to it that the State took no harm” (the *Senatus consultum ultimum*), and the consuls would take the necessary steps to suppress the danger. Such action would resemble an English proclamation of “Martial Law,” both in its effect of temporarily superseding the civil by the military authority and in the requirement that it should be justified by urgent public need.

According to Livy the only penalty imposed by the earlier laws upon magistrates who refused appeals where the right existed was the Censor’s note “improbe factum videri”; but it is hard to believe that a mere mark of dishonour was a sufficient sanction. Mommsen suggests, with much probability, that the real effect of the words was to withdraw the protection of his office from the magistrate who ignored an appeal; so that if under such circumstances he enforced (say) a death sentence, he would be guilty of murder. The general concession of the right of *Provocatio* caused the consuls and the prætors to withdraw from criminal jurisdiction, fearing to incur a loss of dignity by having their sentences reversed. In this way the conduct of criminal trials came to be the monopoly of lesser magistrates—tribunes, quæstors, ædiles, and duumvirs. Mr. Strachan-Davidson gives an interesting account of the procedure at such a trial, with its “*anquisitio*” or public examination conducted by the magistrate on three different days, at which any Roman had a right of audience, though the magistrate could limit the duration of speeches, e.g. Cicero at Rabirius’ trial in B.C. 63 was allowed only half an hour. The verdict was given at the third sitting. Acquittal ended the matter. Conviction in a capital case would result in an appeal to the *Comitia Centuriata*; in other cases, provided the sentence was sufficiently severe to admit of appeal at all, to a tribal assembly. The appeal, where it lay, followed as a matter of course, and there was no need for the accused to say “*Provoco*.” A further interval of three market days was required before the appeal could be heard. Meanwhile the magistrate concerned must send to the consul or prætor and procure auspices for the holding of the *Comitia Centuriata* (if the trial was coming on before that body); and he must cause the *Comitia* to be duly summoned and proclaimed. He must ask high officials and senators to be present and to bestow their advice. The magistrate probably himself presided at the assembly in virtue of his delegated authority. If on the day fixed for the hearing the *Comitia* had to separate before reaching a decision, e.g. owing to unfavourable auspices, the trial could not be renewed and the defendant escaped; thus a rain-storm befriended P. Claudius Pulcher, who lost the battle of Drepana in 249 B.C., and the capital trial was not renewed, though a heavy fine was inflicted.

Even if the *Comitia* sustained the magistrate’s verdict, the death penalty

was in practice seldom enforced. By the time of Polybius (who wrote circ. B.C. 140) it was accepted that the defendant was free to depart into exile at any moment before the comitial trial had been concluded, and in this way, much earlier, Kæso Quinctius and Coriolanus and eight of the decemvirs had escaped death. The defendant clearly could not take this course if at the time he were in fact under arrest, but liberty was generally secured to him by the ready use of the tribunician *auxilium*. In some heinous cases this assistance may have been refused, e.g. the traitors Sp. Cassius and M. Manlius were duly executed, and it is known that the parricide Malleolus perished in the sack circ. 100 B.C. It was also doubtless possible for the magistrate, unconstitutionally, to inflict a sentence of indefinite imprisonment by keeping the offender under arrest and delaying his trial, and sometimes persons thus detained may have been privately put to death in prison; this was, for example, the probable fate of Pleminius, the lieutenant of Scipio Africanus, who had committed outrages on the people of the Italian Locri, while a person named Cornelius, who was accused of rape, committed suicide in prison. Here again such procedure can only have been made feasible by the wilful inaction of the tribunes. For most offenders voluntary exile must have remained a safe recourse. Mr. Strachan-Davidson holds, against Zumpt,¹ that even the "common malefactor" or "street ruffian" could rely on the opportunity's being provided. Perhaps in ordinary cases of Larceny, Assault, or Riot the magistrate's summary *Coercitio*, from the exercise of which there was admittedly no appeal, was adequate to the needs of the situation; but where it was a question of inflicting the death penalty, it is difficult to resist the author's conclusion. The general result of the universal concession of the right of appeal was thus that "the criminal law of the Roman Republic, in spite of abundant threats of capital punishment, became in practice the mildest ever known in the history of mankind."

II.

We must now leave the ancient Roman procedure founded on the free use of the magisterial Imperium, in which Appeal to the Comitia was the safeguard of popular liberty, and come to that "jury system" which during the last hundred years or so of the Republic gradually superseded it; this was established by a series of definite legislative measures, and in it Appeal had no place. At Rome, as in England, the jury of trial appeared as a summary civil process before it was imported into criminal procedure. The "*judicium legitimum*," which Gaius distinguishes from "*judicia imperio continentia*" by the features that the parties are citizens, that the action takes place at Rome, and that it is tried by a single *judex*, no doubt represents the original form of civil suit; though special classes of

¹ Who thought that appeal was allowed only in doubtful and uncertain cases, not where the guilt of the accused was manifest. Strachan-Davidson, i. 167.

sacramental actions were early referred to a body of judges, *i.e.* the Centumviri or the Decemviri. The real link between civil procedure and the criminal jury is, however, found, not in these latter courts, but in the "recuperatorium iudicium"; a trial before a bench of *judices* deciding by majority, not conducted by Sacramentum, and offering advantages in the way of rapid process. Thus the power to *subpœna* witnesses—which was unusual in civil suits—may here have been conceded. This form of action was first introduced for the benefit of foreigners trading in Rome, to whom dispatch in business was obviously an important aim; perhaps it dates back as early as the Treaty of Sp. Cassius with the Latins in 493 B.C. The appointment of a special Prætor Peregrinus in 243 B.C. naturally resulted in a great extension of the procedure, and under the later Republic the Prætor Urbanus adopted it and facilitated its use by citizens themselves. It was thus "a device of the Court for foreigners extended at a comparatively late period to cases between citizens."

The introduction of this civil mode of trial into the criminal system took place through the medium of proceedings against officials for extortion (*repetundæ*). In 171 B.C. the Spanish provincials made complaint to the Senate of the exactions of their governors, and the Senate instructed the Prætor for Spain to send each case before five senatorial *recuperatores*. The proceedings resulted in the conviction of two of the accused, Furius and Matienus, who thereupon withdrew into exile. The Senate similarly made special arrangements for other such cases as they arose; until at length, in 149 B.C., a law passed by the tribune L. Calpurnius Piso Frugi set up a standing court for extortion. The subject was dealt with again in 123 B.C. by a law of Caius Gracchus, to which Mommsen, on scanty evidence, gives the name "*Lex Acilia repetundarum*"; this law, as reconstructed, is our main source of information as to the proceedings in these trials for extortion.

It is hard to say whether these proceedings should be classed as civil or as criminal. On the one hand, they were originally devised as a remedy for injured parties, the word *petere* (to sue) being used of the act of accusing; until the "*lex Acilia*" they were conducted by Sacramentum; and they resulted in condemnation in damages, which, before the "*lex Acilia*" and probably again after Sulla, represented merely the single amount of the loss inflicted. On the other hand, extortion is in its nature a public offence, it affects large masses of people rather than isolated individuals, and this was fully recognised by the laws creating the *Quæstio repetundarum*; they allowed any person, citizen or foreigner, to institute proceedings, and departed from the usual rule in private suits by permitting a number of charges to be combined in one accusation. The damages thus often included an estimate of official misconduct other than extortion, *e.g.* a governor's exceeding his jurisdiction, or a juror's taking bribes; and in nearly every case the sum awarded was large enough to compel the offender to withdraw into voluntary exile. There are in fact only two known instances where this result did not

ensue; that of L. Lentulus, consul in 156 B.C., who is known to have become censor nine years later, a condemnation for *repetundæ* having intervened, and that of the consul C. Porcius Cato, condemned in 113 B.C., where the damages awarded amounted to only about £40. The author is somewhat puzzled to account for the prevalence of this self-banishment; he suggests, with Mommsen, that before the Lex Rutilia (probably in 105 B.C.) mitigated the bankruptcy procedure, the object may have been to escape this with its severe *addictio*. One may guess, however, that great unpopularity and disgrace attached to conviction for extortion—later on was added the legal *infamia* which disqualified for the exercise of public functions—and these, in addition to the unusually heavy pecuniary penalties, must have furnished a powerful motive to withdraw from Rome. On the general question of the nature of the “*actio repetundarum*,” we may adopt Mommsen’s phrase, and say that it was nothing but “a private suit with a sharpened process.”

After the Lex Calpurnia came a series of statutes, each setting up a permanent jury-court (*quæstio perpetua*) to deal with a particular category of offences; these statutes were all taken up and re-enacted in Sulla’s *leges Corneliae*, and other legislation followed. The result was that before the end of the Republic separate tribunals had been established for treason, corrupt practices, murder, assault and battery, breach of the peace, forgery, certain kinds of conspiracy, malicious prosecution, and a number of other offences. Cicero in 56 B.C. was able to say that the new procedure extended to all classes of misdeeds: “*cum omnium peccatorum quæstiones sint.*”¹ Sometimes incongruous offences were grouped together in the same category, *e.g.* the Quæstio established for murder dealt also with arson and “perhaps barratry,” while the forgery court had to take breach of trust, coining, and crimes connected with inheritance. Rape may have been dealt with at this time either under the head of breach of the peace (*vi*)—as it certainly was in the Empire—or as a form of assault.

For each offence the appropriate punishment was prescribed in the constituent *lex*. In most cases this was a capital penalty, standardised under the name “*pœna legis Corneliæ*,” and a convicting court had no more power to lessen or vary it than has a present-day judge after the jury has found a prisoner guilty of murder. Since actual private vengeance was now long a thing of the past, this sanction of death, by no means ‘bilaterally’ penal, suggests that we are back once more in the unchallenged domain of Crime. The new system, in Mr. Strachan-Davidson’s phrase, “developed its procedure from private law and its consequences from public law”; but in the result the procedure itself became distinctively public. Thus any

¹ Pro Balbo, 28.65. Certain “breaches of the moral law” for which “reparation was prescribed by the State” were, however, still remedied by private suit before the urban prætor, *e.g.* theft, wilful damage, gross moral offences, and *Injuria*. For assault, concurrent private and public proceedings were available. Strachan-Davidson, i. 218-221.

individual could start a prosecution, the *Sacramentum* was no longer used, the juries were large, and the right to be represented upon them was a franchise over which the wealthier orders contended for well over fifty years. Criminal rather than civil jurisdiction is also suggested by the names "*quæditor*," "*quæstio*," given to the president and the court respectively. Therefore "each fresh *quæstio* is looked upon as bringing for the future a new range of offences under the direct cognisance of the will of the people as expressed in its laws and enforced by its courts."¹ We have travelled far from the old *Recuperatorium iudicium*, some way even from the five senators who tried the Spanish governors in 171 B.C.

In the relation between a *Quæstio* and the *Comitia* establishing it may, however, be traced an analogy, on which the author dwells, to the relation between *prætor* and *iudex* in a private suit. In both cases there is "a division of labour between the power which fulminates the sentence and the power which pronounces" the decision. Yet the *Quæstiones* were not, as Maine asserts, "mere Committees of the Popular Assembly," or "bodies which ministered only to a higher authority";² for there was no appeal to the *Comitia* from their decisions, and they did not "strike straight at the offender" as the Assembly itself would have done—on the contrary, they had to wait for private prosecutors to take the initiative. They are thus rightly regarded, not as committees, but as separate courts.

Each of such courts consisted of a president (*quæditor*), who might be a *prætor* but was often only a private citizen, assisted by a number of private *iudices*; the latter were sworn, and the verdict was determined by a majority of votes. The quarrels between senators and knights (*equites*) over the privilege of jury-service—more prized then than now—fill an interesting chapter of Roman history; eventually in B.C. 70 the *lex Aurelia* provided for a general *album iudicum* to be drawn up by the *prætor urbanus*, in which the three orders of *senatores*, *equites*, and *tribuni ærarii* were to be equally represented.³ We read of eleven different modes of empanelling a jury, in most of which a considerable right of peremptory challenge (*rejectio*) was allowed to both sides. Thus, at the trial of Milo *de vi* under Pompey, the whole 360 jurors on the *album* sat until the last day, when all but eighty-one chosen by lot were dismissed; these eighty-one heard the speeches of counsel, then each party struck off fifteen, and the residuary fifty-one gave the verdict. There seems to have been nothing corresponding to the English challenge 'for cause shown,' although the abuses which that right guards against were very patent in the Roman system. It was possible for a jury to

¹ Strachan-Davidson, ii. 22; quoting also Cicero on the *lex Cornelia de falsis* "ut quod semper malum facinus fuerit, ejus quæstio ad populum pertineat ex certo tempore." *In Verrem*, i. 42. 108.

² See *Ancient Law*, pp. 386 *et seq.*

³ The author in chap. XVII. propounds a very interesting theory as to the qualifications of the two last orders.

return a verdict of "non liquet," corresponding to the Scotch "not proven"; and after such a decision the trial could be renewed. It seems that in order to effect a conviction, the condemnatory votes had to show a majority over the votes of "Absolvo" and "Non liquet" taken together. The sentence due on conviction was fixed in each class of cases by the law establishing the particular court.

Though the *quæstor* was regarded as the officer responsible for the inquiry, and the jurors were merely 'of counsel' to him, he was bound by their decision, and seems indeed to have had little to do beyond giving voice to the verdict. Mr. Strachan-Davidson holds, against Mommsen, that he himself did not have a vote; and certainly his control over the proceedings was very small. Neither he nor the jurors could question witnesses or remark on the evidence; and there was no attempt to extort a confession from the defendant. The whole burden of establishing the accusation thus lay on the prosecutor and his counsel. "The jury listen to whatever the advocate chooses to bring before them. His opponent never thinks of objecting, for there is no one to enforce the objection." The procedure under the *Quæstiones* thus resembled the English procedure in being, not "inquisitorial," but most markedly "litigious" or "accusatorial." The "extraordinary system" which took the place of the *Quæstiones* during the Empire was of a different character; the magistrate who in this conducted the trial without the help of a jury was expected to investigate the case for himself—he was "to search into everything," "to ask frequent questions." It is from the Imperial practice (and from the Canon law) that the "inquisitorial" procedure which prevails on the Continent in spite of the importation of the jury is derived.¹

On the other hand, the Roman system in all its stages, as well as modern Continental systems, differs from the English in its lack of a coherent law of evidence. Rules of exclusion are likely to grow up only where the judge is a trained lawyer acting with a jury composed of ordinary citizens who require guidance in dealing with testimony—a combination which notably exists in England. But in the Roman jury procedure the *quæstor* himself was never required to be a legal expert, while a comparatively high level of worldly knowledge prevailed among the jurors on account of their exclusive selection from the wealthier classes. Under the Empire the inquisitorial magistrate could hardly be expected to limit *his own* researches by evidentiary rules; this applies also to the French and other modern systems. At Rome, then, there was nothing to hinder the proof of irrelevant facts resembling the fact in issue—*e.g.* previous offences of the accused. Hearsay was freely admitted; Roman treatises on pleading proclaim the witness's duty to state not only what he knows, but "what he has heard." Thus Silus gave in evidence what he had heard against Piso; though the

¹ Cf. on this subject M. Speyer's article "Le Jury à Rome et en Angleterre," referred to above. *Law Quarterly Review*, Oct. 1907.

latter's advocate, Crassus, managed first to make the witness admit that perhaps he had not understood aright, and then to suggest that "possibly he had never heard the statement at all," which sally overwhelmed the Court with laughter. Again, evidence of opinion was freely allowed; for instance, it was a mark of a careful witness that he would scruple to say more than "Arbitror"—"I think." Both the cross-examination of witnesses to credit and the reception of evidence of the defendant's character were carried to extraordinary lengths. Indeed, the defendant's character seems to have been regarded as an issue more relevant than the facts alleged against him. Cicero mentions proof of his evil reputation as one of the first things which a jury may expect from the prosecution, and when Fulcinius Trio had failed to establish (before the Senate) a certain accusation of murder, he was permitted "as a consolation" to attack the former life of the accused. Evidence of good character was also freely admitted; and it often took the form of general "laudationes," made by affidavit *in absentia*, with no representative of the prosecution present to cross-examine. At Rome such affidavits were readily received for general evidentiary purposes until Hadrian rejected them, saying, "My practice is to question the witnesses themselves."

The typical penalty attached to the crimes dealt with by the *Quæstiones*—*pæna legis Corneliæ*—was certainly "aquæ et ignis interdictio" and was equally certainly "capital."¹ This was in fact the old *Sacratio*, which probably by the time of Polybius had lost its religious significance. "The person banned is cut off from the fire and water of the tribe"; he becomes an outlaw, but the gods no longer claim him. Under the old system this interdiction had been used to prevent the return of those who had already gone into exile.² It now became the substantive penalty itself. Mr. Strachan-Davidson argues strongly that the sentence was one of outlawry—*i.e.* death which the culprit could escape by exile,—not a direct sentence of exile itself. The offender was liable to be killed wherever found until he had renounced the Roman citizenship by being received into another State, "becoming a Rhodian or a Massiliot," after which he was free to travel anywhere, except back into Italy. Mommsen, however, held that the Sullan "aquæ et ignis interdictio" was a specific and mild form of banishment, differing from the ancient "exilium," not involving any loss of *Civitas*, and inflicted as a substantive penalty ("die Verbannung durch den Rechtspruch" as opposed to "die Verbannung vor dem Rechtspruch"); that it was in fact identical with the "relegatio" which formed part of the magistrate's *Coercitio*, with an added prohibition

¹ Ulpian (as rendered in *Collatio*, i. 3. 1), quoting *Lex Cornelia de Sicariis*, "ut prætor quærat de capite ejus qui cum telo ambulaverit hominis necandi causa"; and Cicero, *pro Cluentio*, 54. 148, quoting Sulla's law against conspiracy, "*de ejus capite quærito*." Strachan-Davidson, ii. 23.

² Greenidge, *Legal Procedure*, p. 512. Cf. Strachan-Davidson, ii. 30, for Mommsen's suggestion that originally this procedure was applicable only against foreigners—*i.e.* in cases where it was desired to exclude them from Roman territory.

to return on pain of death. The author shows good reason against this view. Thus we are plainly told by Ulpian and Cicero that the proceedings were capital; and Cicero in *pro Cæcina* and *de Domo* also makes categorical statements to the effect that "in no law of ours has any crime been punished by exile." Mommsen's attempts to explain away such dicta are hardly convincing. At any rate, Tiberius in A.D. 23 introduced *Deportatio in insulam* in place of *Aquæ et ignis interdictio*. After this change the convicted criminal was seized and interned in an island; and he lost the citizenship immediately on his island's being assigned. Thus the deprivation of citizenship became indisputably part of the sentence, and "we never again hear of a condemned Roman becoming the citizen of another State."¹

Maine then was clearly mistaken in attributing the disappearance of the death penalty to the establishment of the Quæstiones by the Assembly of the Plebs, which under the Twelve Tables could not judge in capital cases, a function reserved to the Comitia Centuriata. In all probability, the death penalty had not legally disappeared at all; in practice, long before the Quæstiones, it had ceased to be carried out in ordinary cases, owing to its regular and permitted evasion by exile. The only difference in the resultant position under the Quæstiones was that the opportunity of evasion became more certain, owing to the lack of any power of preliminary arrest. Again, not all the Quæstiones were established by the Assembly of the Plebs—the author points out that Sulla, being a patrician magistrate, could not propose plebiscita—and, as we have seen, they cannot in any case be regarded as committees of the appointing body. In point of fact, it was in respect of judicial functions only that the Twelve Tables gave exclusive powers to the Comitia Centuriata. In the sphere of legislation, plebiscita and leges had the same competence—"inter plebiscita et legem species constituendi interest, potestas autem eadem est" (Pomponius, Digest, i. 2. 2. 8).

With the death of Cicero and the fall of the Republic, in words of the author which his vivid last chapters seem to belie, "the life and interest of our subject fade away"; let that be our excuse for throwing only the most cursory glance over his detailed account of the Imperial procedure. Under the Empire the Princeps and the Senate were in theory co-ordinate Courts of Justice, no appeal existing from one to the other, but in fact the influence of the former predominated. Augustus delegated a certain criminal jurisdiction

¹ According to Dio Cassius, "Tiberius denied to those who were interdicted from fire and water the right to make a will." The author interprets this as referring to the right to make a will as a citizen of another State, which would be abrogated by the abolition of the old privilege of naturalisation. But may not Dio have meant simply that the *Roman* Testamentifactio, which had previously existed until such naturalisation had been effected, disappeared with Tiberius' express deprivation of the Civitas? Under the former law Cicero (*pro Cæcina*, 34. 100) had written of those "qui si in civitate legis vim subire vellent, non prius civitatem quam vitam amitterent"; and on this ground the author himself explains the validity of the will of the elder Oppianicus. See Strachan-Davidson, ii, 69, 70.

to the *Præfectus Urbi*, whose Court, exercising an "extraordinaria cognitio" free from the restraints of the jury system, was by the time of Nero an established alternative to the *Quæstiones*. These gradually lost all their business, until early in the 3rd century A.D. Paulus was able to write "*Ordo exercendorum publicorum capitalium in usu esse desiit*."¹ The final relic of trial by jury is found in the *quinquevirale iudicium*, prescribed A.D. 376 by Valens, Valentinian II., and Gratian for cases where a Senator was accused; here the trial was to take place before a bench consisting of a Prefect and five Senators. We hear of this Court for the last time under Honorius, in A.D. 423; thenceforward the "extraordinaria cognitio" occupies the whole judicial field.

The magistrates having regular jurisdiction over the more serious criminal cases were the *Præfectus Urbi* and the *Præfectus Prætorio* at Rome, and the Governors in the Provinces. The *Prætorian Prefect*, at first a military adjutant-general, owed a very important position in the legal system to his prominence in the Emperor's Privy Council (*auditorium*), to which body Hadrian gave a permanent constitution. Later he appeared with a court of his own having jurisdiction over matters occurring beyond the hundredth milestone from the city, within which limits the appropriate court was that of the *Præfectus Urbi*. As president (in the Emperor's absence) of the Imperial Auditorium, he became the chief judicial officer, and, as is well known, eminent jurists such as Papinian, Paul, and Ulpian were appointed to the post. The natural result was that the military duties of the office soon ceased to be taken seriously. The two prefects between them shared the jurisdiction over provincial appeals; but from the City Prefect a further appeal lay to the Imperial Auditorium, under the presidency of the other officer. From the *Prætorian Prefect* it was originally possible to appeal to the Emperor himself, but in A.D. 331 Constantine abolished this recourse. Yet the Emperor might still be petitioned for pardon, or might demand to be consulted by the magistrate while the case was pending. When Constantine established four *Prætorian Prefectures*—one each for Italy, the East, Gaul and Illyria—it was the *Præfectus Orientis* who presided in the Eastern Emperor's *Comitatus* ("*præfectus prætorio qui est in comitatu nostro*"), and this gave him the primacy. As the Emperor ceased in time to take a personal part in the proceedings of his Council, this prefect, acting with the *Comitatus*, would probably have, at least when there was no separate Emperor in Italy, an appellate jurisdiction over the whole Empire.²

When compared with the *régime* of the *Quæstiones*, this "extraordinary system" shows many signs of degeneracy. We still read in Paulus of the statutory penalty, "*pœna legum*," but it can now be increased or diminished

¹ Dig. 48. 1. 8, quoted Strachan-Davidson ii. 158.

² Appeals in the strict sense were apparently not allowed from the prefects of Gaul and Illyria; but there was a recourse from their decisions by way of "*supplicatio*" which would most likely result in consideration by the *Comitatus*. See on this difficult subject Strachan-Davidson, ii. 201-3.

at the judge's discretion. This, of course, had advantages, since it enabled the judge to take into account "the prevalence or otherwise of the offence in a particular district, the previous record of the offender, and the question whether he acted deliberately or under the influence of passion or carelessness"—all factors which English readers will think a judge *ought* to take into account in passing sentence—but it indicates a derogation from the strict Rule of Law established in the free Republic. The penalties of the law also varied according to the rank of the offender; from this standpoint we find legal distinctions between "*honestiores*" and "*humiliores*," and, within the former privileged class, soldiers and decurions escape less lightly than the other members. Death is no longer a hard name for exile. It is a dread reality inflicted by the most terrible means, such as crucifixion, burning alive, and throwing to wild beasts; though it is true that the worst forms are reserved for humble persons. Torture and penal servitude in the mines have made their way into the list of punishments. There is now no need for the magistrate to wait for private prosecutors to bring forward accusations. He can act on his own initiative, and at the trial he is expected to ask questions and to investigate everything for himself; for the "litigious" theory has given way to the "inquisitorial." Appeals, as we have seen, are generally allowed; and even an acquittal is not final. Yet in certain capital cases there can be no appeal after sentence—for example, this recourse is not allowed to notable brigands or ringleaders in sedition, or to utterers of false coin unless they are soldiers; nor can persons convicted of rape, homicide, or witchcraft appeal unless the case appears to be doubtful. But the rules laid down for appeals were often mutually inconsistent, and the judge must have found it hard to decide when he ought to send the case to a superior court and when he ought not to do so.

With the decadence of the Empire in the fourth and fifth centuries, the legal organisation itself weakened and lost the power even to keep order. The people of the provinces were at the mercy of a host of fiscal officials—*palatini*, *comites*, *peræquatores*, *curagendarii*, and *curiosi*—whose exactions the courts could not control. Judicial corruption itself was rife. Plaints were tendered to the judges after they had left the court; in some cases suitors pursued them for this purpose to their retiring rooms and interfered with their sleep. They often heard cases in their own offices, and required suitors to pay for audiences. Bribery was so common that it was made a legal offence for a provincial to entertain his governor, or even to pay an afternoon call on him. Legal costs were exorbitant. Prisoners were kept in gaol indefinitely awaiting trial. The worst evils of maintenance were apparent. "In the legal sphere, as elsewhere, despotism accomplished its perfect work by a return to anarchy. It is a dreary epilogue to the long and eventful story of the Roman Criminal Law."

The main outlines of that story we have tried to set forth as clearly as possible; but the whole can be read at large, and much better, in the pages

of Mr. Strachan-Davidson's book. The author discourses of a number of highly interesting topics on which we have not had space to touch: for example, of the meaning of *parricidium*, and the explanation of the punishment of the Sack, a "procuratio prodigii"; of whether the *Sacramentum* was originally an oath or a wager; of the extent to which judicial decisions were a source of law at Rome; of the much-debated happenings at the trial of Caius Rabirius for a murder thirty-seven years old, and the stratagem whereby Metellus Celer broke up the *Comitia*, perhaps with the connivance of its president, Julius Cæsar; of the technical distinction once drawn between *Provocatio* and *Appellatio*; of the principle of the *forum delicti* as applied in Roman law; of the "crimina extraordinaria" of the later Empire, which included regrating food supplies, sweating coins, and σκοπελισμός (an Arabian form of boycotting); and of *Stellionatus*, a general crime covering all kinds of misbehaviour not falling under any known legal description. All these engrossing subjects, and many more, the Master of Balliol handles with consummate skill. He has given us a work full of fascinating matter, a piece of ripe scholarship, rendered doubly attractive by its clear and charming literary style.

THE GREAT JURISTS OF THE WORLD.

XVII. GAIUS.

[*Contributed by J. C. LEDLIE, ESQ.*]

IF the traveller in Northern Italy should feel a wish to escape for a moment from the atmosphere of ever-expectant attention that besets the eager sight-seer on every side, he may, if he choose, have his way when he comes to Verona. Quitting the Cathedral by the west entrance, he may cross the little Piazza del Duomo to the Palazzo dei Canonici, the home of the Chapter library—a modest home enough, for all its grand name—and there, if he likes, he may leave the glare and noise of the streets, and the pushfulness of touts, behind him, and pass for a while into the dim, peaceful sanctum of scholarship. He will be received with kindly dignity by the courteous librarian—he will probably be the only visitor—and, on stating his wish to see the palimpsest of Gaius, he will be shown, without further ado—it lies ready to hand—a strange-looking, time-stained, much-mauled bit of parchment. This curious document, with its words (a great many of them contractions) all joined together and innocent of punctuation, will probably convey little meaning to him, unless he happens to be an expert palæographer. Nevertheless, it has a strange, eventful history to tell, and our traveller might do worse than listen for a few moments to its story in the peace of the old library, while without, on the one side, the sounds of the modern town's life pass muffled by, and on the other, not many yards away, the Adige—Virgil's "*Athesis amœnus*"—rushes joyously on its impetuous course, just as it did some 1,750 years ago, when Gaius wrote law-books and taught law (we know not where), and when, some 300 years later, an industrious scribe made (we know not where) this copy of Gaius's most widely known work.

Who, then, was Gaius? We know next to nothing about him personally. Where data are few, guesses are many. The very dearth of our information has produced an overwhelming volume of literature, a perfect riot of conjecture. We do not even know his name, or his birthplace, or where he lived. Was Gaius his nomen, or his cognomen, or merely his prenomen? The last is the most generally accepted view, but authorities have been found to champion each of the other alternatives. And if "Gaius" was a prenomen, what was his complete name, and how came he to be universally called by his prenomen only? Here, again, the guesses are numerous, and some of them utterly fantastic. Among the names proposed are Gaius Pomponius,

Titus Gaius, Gaius Bassus, Gaius Noster (as though "noster" were a proper name), Gaius Lælius Felix. Another conjecture is that his full name was C. Cassius Longinus, and that he was identical with the famous lawyer of that name who was Consul in A.D. 30, and succeeded Masurius Sabinus in the leadership of the Sabinian, or Cassian, school. In support of this theory it is pointed out that Gaius was admittedly a prominent adherent of the school mentioned, and further, that of the only four passages in the Digest in which an author is cited simply by the name of "Gaius," three—one (Dig. 24, 3, 59) from Julian, and two (Dig. 35, 1, 54 and 46, 3, 78) from Julian's "preceptor," Javolinus—refer almost certainly to C. Cassius Longinus, while the fourth (from Pomponius, Dig. 45, 3, 39) probably does so too.¹ From this it is argued that Gaius must have been the short name by which C. Cassius Longinus was generally known in the profession. This theory, however, cannot be reconciled with the evidence furnished by Gaius's works as to the dates at which he lived. From that evidence it is abundantly clear that the author of the Institutes must have lived much later than A.D. 30. In order to get over this difficulty it has been suggested that our Gaius, if not identical with the leader of the Cassiani, was, at any rate, a descendant and namesake of his. But this theory is little more than a random guess, and is merely an attempt to explain why Gaius was called by his prenomens only—the idea, apparently, being that he was so called for short, in order to distinguish him from his supposed ancestor. Huschke has conjectured that Gaius may have been one of the two jurists bearing the same nomen and cognomen, and differing only in their prenomens, and that, in order to differentiate them, it became customary to call our Gaius by his prenomens. He offers, however, no surmise as to who Gaius's mysterious namesake may have been. Dernburg has put forward a theory that Gaius was simply an affectionate nickname given by students to a popular lecturer, and that the name stuck to him ever after, both among members of the legal profession and in the book trade. Other writers, abandoning the search for the full name, have turned the single name to account in support of some theory concerning his personal history. Plain Gaius, it is said, must have been a man of humble position—a freedman, perhaps; certainly he could not have held any important office. Mommsen uses the single name as an argument for his view (below, p. 235) that Gaius was a Greek provincial, the practice of calling a man by his prenomens being peculiar to Greek districts. The mystery is still further deepened by the curious fact—one of the many curious facts in the story of Gaius—that (apart from the doubtful passage from Pomponius in Dig. 45, 3, 39, above referred to) not a single mention of his name occurs in any legal writer or historian, whether contemporary or other, during

¹ There is still some doubt (assuming C. Cassius Longinus and our Gaius to be different persons) to which of the two writers Pomponius's "Gaius noster," in Dig. 45, 3, 39 refers (see Roby, *Introduction to the Study of Justinian's Digest*, p. clxxv; Muirhead, *Roman Law*, second edition, p. 301, note 6).

a period of some 250 years from his death—not even in Ulpian's *Liber singularis regularum*, where the resemblances with Gaius's works are numerous, and where one would naturally have expected some allusions to the earlier writer. And yet, during those 250 years, Gaius's literary reputation was steadily on the increase, and his name was becoming a household word wherever law was taught. Diomedes the grammarian, indeed, who lived towards the close of the fourth century, mentions him once; but, as far as the law is concerned, the earliest references to him occur in Valentinian III.'s Law of Citations of A.D. 426 (see p. 238), and in the *Mosaicarum et Romanarum Legum Collatio*.¹ Nowhere, however, is he spoken of otherwise than as "Gaius," and the riddle of his full name (if he had one) remains unsolved.²

When we come to the question of Gaius's dates, we are on much firmer ground. The evidence on this point is almost entirely derived from his extant writings—his Institutes, and the excerpts from his other works in the Digest—but, such as it is, it is sufficient to produce substantial agreement among the authorities. We are able, for example, to infer from a passage in his book on Trusts, which is preserved to us in Dig. 34, 5, 7, pr.—"*nostra quidem ætate Serapias, Alexandrina mulier, ad divum Hadrianum perducta est cum quinque liberis quos uno fetu enixa est*"—that he lived in the reign of Hadrian, and that at the time when this passage was written Hadrian was probably no longer alive, it being the general, though not the invariable, practice of Gaius to prefix the word *divus* to the names of deceased Emperors only, and to describe a living ruler (if he gave him any adjective at all) by some such term as *optimus* or *sacratissimus*. We derive much assistance, again, from the various references in Gaius to contemporary *senatusconsulta* and Imperial laws, the dates of which we are able to determine from other sources. And whenever Gaius, in dealing *in extenso* with a particular subject, fails to mention a recent alteration in the law—e.g., in his discussion of the law of *cretio* in Institutes ii. 177, he makes no mention of the change by Marcus Aurelius referred to in Ulpian's *Fragmenta* (xxii. 34)—we have some reason for assuming that the alteration was made too late for him to take it into account. Of course, such facts as the absence of any reference in the Institutes to well-known enactments like the *Senatusconsultum Tertullianum*, *Vellæanum*, or *Macedonianum* can be explained on other grounds, and, in any event, allowance has always to be made for the many lacunæ which still, unfortunately, mar the text of the Institutes.³ But, on the whole, the evidence

¹ The date of the *Collatio* is uncertain. Huschke assigns it to the end of the fourth century; others think that it was later than the Law of Citations. Tit. xvi. 2 of the *Collatio* contains an extract from Gaius's Institutes (book iii. 1-17).

² On the whole question, see Prof. Goudy's Appendix to the second edition of Muirhead's *Roman Law*, pp. 431-3.

³ One of these lacunæ occurs in the very part of the manuscript where a discussion of the *SC^m Tertullianum* might have been expected. The absence of any notice of these *senatusconsulta* and of other matters of importance to students, such as *commodatum*, *depositum*, *pignus*, *dos*, is pointed to by Dernburg as evidence in favour of his theory that

for fixing Gaius's dates is fairly satisfactory, and, accordingly, it is generally held that he lived in the reigns of Hadrian (A.D. 117-138), Antoninus Pius (A.D. 138-161), and Marcus Aurelius (A.D. 161-180)¹—that is, in the Golden Age of the Roman Empire—the age when its material prosperity and the efficiency of its administration were at their highest, and when the rapid growth and spread of Greek influences—which, as Huschke says, borrowing a simile from Cicero, from a *tenuis rivulus* had become an *abundantissimus amnis*—had produced a remarkable rise in the level of general culture, and a keen interest in art, poetry, and philosophy. Within the domain of law, the age in question covers a period of the most brilliant and fruitful literary activity that the world has ever seen. Midway in this period stands Gaius. The great names of Celsus, Africanus, Pomponius, and, above all, Salvius Julianum (the last jurist cited by Gaius), already belong to the past. The bearers of still more illustrious names—Papinian, Ulpian, Paul—had yet to come.

The next question—the question where Gaius lived, and what his precise vocation was—raises difficulties of a formidable kind. There are two main theories in the field, associated with the honoured names of Theodor Mommsen and Eduard Huschke respectively,² and each of these theories has its variations in matters of detail. According to Mommsen, Gaius was by birth a Greek, and by profession a jurist, who wrote and lectured on law at Troas, an important town in the Province of Asia (though nothing is known of any law-school there), and one of the three places—"Italicus iuris"—mentioned by Gaius himself in Dig. 50, 15, 7. The fact that he was called by his prenomen only is pointed to as evidence of his Greek origin (above, p. 233). He was, obviously, also familiar with the Greek language and with Greek literature and history, for he quotes Homer and Xenophon and the laws of Solon. He always shows a keen interest in the laws of foreigners—he wrote a commentary in thirty books on the Edictum Provinciale,³ the only book of its kind that is known to us—and makes specific mention of the laws of the Galatians (Inst. i. 55) and the Bithynians (i. 193), both of them peoples

the Institutes were not published as a complete book, but were merely a collection of notes for lectures (*Die Institutionen des Gaius ein Kollegienheft aus dem Jahre 161 nach Christi Geburt*).

¹ It is doubtful whether he survived into the reign of Commodus. A.D. 180 is the last date traceable in his life.

² The arguments in favour of Mommsen's theory, and Huschke's grounds of objection, are conveniently summarised by Dr. Roby, *op. cit.* p. clxxv ff.

³ What this Edictum Provinciale precisely was is a highly controversial question, as to which reference may be made to Dr. Roby (*op. cit.* p. clxxviii ff.). Some hold that it was the traditional common part of the several provincial edicts. Mommsen, however, maintains that a general edict applicable to all the provinces was an impossibility, and that each provincial edict was only valid in the province for which it was promulgated, though he agrees that the substance of the various edicts may have been, to a large extent, the same. The edict commented on by Gaius must, he thinks, have been the Edictum Asiaticum. Huschke, however, points with much force to the great improbability of any jurist composing a work in thirty books on the edict of a single province.

living in Asia Minor. He was not, according to this theory, a practising lawyer, but devoted himself entirely to literary work and lecturing. A large number of his works have undoubtedly a definitely educational aim. It is almost certain—and here Mommsen has the great weight of authority on his side—that he never had the *ius respondendi*—the right, that is, to pronounce binding legal opinions *ex auctoritate principis*. This explains why, among his numerous works, there is no trace of any collection of *responsa* (authoritative opinions) or of *quaestiones* (practical cases), the *liber de casibus* (from which there are seven extracts in the Digest) being apparently concerned, not with actual cases, but with hypothetical points and examples. If Gaius had ever enjoyed the *ius respondendi*, and the prestige which such a privilege would naturally have conferred upon him, the fact (already adverted to) that he is not mentioned by a single legal writer for some 250 years after his death would be simply unaccountable, especially if, as some think, he lived and practised at Rome. If, on the other hand, the true view is that he was a professor of law in a provincial town in Asia Minor, not possessing any recognised status among the law-making agencies of his time, and cut off from the main current of contemporary legal life, the fact in question—though still somewhat remarkable in view of the immense popularity that subsequently fell to his share—becomes, at any rate, explicable.¹ True, he took a vigorous part in the controversial warfare of the schools, and frequently, in the Institutes, ranges himself on the side of the Sabinians (*nostri praeceptoris*), in opposition to the Proculians, the *diversae scholae auctores*. But he was the last eminent jurist in whom this antagonism of the schools appears, and it is quite possible that the controversial spirit lingered for some time in the provincial law-schools long after it had become, in M. Girard's words, “une habitude démodée” in the capital.

As against Mommsen's theory, Huschke and others point out with regard to Gaius's name, that there are many instances of undoubted Romans being called by their prenomen only—*e.g.*, Appius (Claudius), Servius (Sulpicius), and Sextus (Pomponius), and some Emperors, such as Titus and Marcus—and, further, that there were other Greek writers who did not limit themselves to a Roman prenomen. And as for Gaius's references to the Greek language and Greek literature, Huschke, while not concerned to deny that Gaius may have been a Greek born in a Roman colony in the East, urges with some force that, in view of the very general spread of Greek culture at that time, it would be rash to draw any such conclusion from those references alone. Unlike Papinian and Modestinus in a later age, Gaius never wrote any of his works in Greek. The Greek quotations (*e.g.*, the passage from the *Iliad* vii. 472-5, quoted in Inst. iii. 141) were, it is suggested, for the most part the merest

¹ The language used by Gaius in a passage from his commentaries on the Edictum Provinciale (Dig., vol. ii. pp. 7, 9)—“*miror quare constare videatur, neque heredi neque in heredem dandam hanc actionem*”—is certainly, as Puchta points out, suggestive of the attitude of a man who considers himself as standing outside a charmed circle, and ventures, “with deference,” to criticise a ruling of the official authorities.

commonplaces of the legal controversies of the time. As for foreign laws, they had received attention from other jurists besides Gaius, and the spread of Greek influences and the increased intercommunication between the different parts of the Empire—Hadrian, the “travelling Emperor,” was nicknamed “Græculus” by his contemporaries—had produced a very wide-spread interest in what we should call comparative law. Up to this point the criticisms of Huschke are effective enough, but when he comes to the constructive part of his argument the result is less satisfactory. In two passages of the Digest Gaius gives as an example of a “condition” “si navis ex Asia venerit”; in another, “si ex Africa venerit.” In Dig. 45, 1, 74, he mentions, by way of illustration, “fundus Tusculanus” and “vinum Campanum.” In Dig. 45, 1, 141, 4 he has “si inter eos qui Romæ [not Troade] sunt, talis fiat stipulatio: hodie Carthagini dare spondes?” It is suggested that examples like these—and there are others—would never occur to a writer not living in Rome. Huschke is fain to admit that this is a somewhat frail argument. “These things,” he says, “taken by themselves, prove little,” though he ventures to think that, “taken together,” the points urged by him “have great weight in refuting” the rival theory. His conclusion is that a lawyer so well abreast of the legal knowledge of his time, and so keenly interested in the controversies of the schools, could not possibly have lived “in aliquo provinciarum angulo abditus,” but must have exercised his profession at the centre of the legal world.

Of the two theories, Mommsen’s is perhaps the more plausible and ingenious, but, after hearing the advocates on each side, it is difficult to gainsay the conclusion of Dr. Roby (*op. cit.* p. clxxvii) that neither party has proved his case, and that the problem as to where Gaius lived and wrought still remains unsolved.

Gaius was a prolific writer. The Florentine Index (which will be found prefixed to Mommsen’s edition of the Digest) enumerates thirteen works, but the list is not exhaustive. In the Digest he is represented by 535 excerpts, as compared with 601 from Papinian, 2,081 from Paul, and 2,464 from Ulpian. Only the most important of his works need be specifically mentioned here. Besides the commentary on the Edictum Provinciale already referred to (p. 235), Gaius wrote a commentary on the Edictum Urbicum (of which, according to the index, only ten books were found); six books on the Twelve Tables (he was the only post-Augustan jurist who was sufficiently interested in this ancient statute to write a commentary on it); fifteen books on the Leges Julia et Papia (representing the modern *ius civile*); a book *de casibus* (above, p. 236); and several monographs. The most famous of his works was probably the *Rerum cottidianarum, sive aureorum, libri vii.*, in which he discussed—more fully than in the Institutes, but on similar lines—a number of “everyday” fundamental legal truths. The sub-title of the work—*aurea*, the golden book (which was no part of the name given by the author himself)—bears testimony to the admiration which subsequent generations felt for the book.

But of all Gaius's works, the one that possesses the greatest interest for us is, of course, the Institutes, or, to give it its full title, *Institutionum iuris civilis commentarii quattuor*, and it is with the romantic history of this work that Gaius is, for us, inseparably bound up. Its success was remarkable. It gradually established itself as the standard text-book for students of Roman law, and maintained that position for upwards of 300 years. Other eminent jurists wrote *Institutiones*—Callistratus, Marcianus, Florentinus, even Paul and Ulpian—but none of them was able to dethrone Gaius's work from the proud place it had secured for itself. The Institutes and *Res cottidianæ* were perhaps the first of Gaius's writings to achieve definite recognition among lawyers; but as his reputation grew, his other works came to enjoy an equal authority. Accordingly, when Valentinian III., in A.D. 426, enacted his Law of Citations—thereby, most probably, giving effect to a recognised practice of the courts and the legal profession—he included Gaius among the five select jurists *all* of whose writings were to have binding authority (*universa scripta firmamus*), adding, in regard to Gaius (so as to remove any doubt that might arise from the fact of his never having had the *ius respondendi*), “ita ut Gaium quæ Paulum, Ulpianum, et cunctos comitetur auctoritas, lectionesque [= passages] ex omni eius opere recitentur.” Thus it came to pass that Gaius, the unpatented jurist, the humble professor of law and writer of books, the theoretical jurist—a mere provincial, maybe—whose works no contemporary or subsequent lawyer or historian deemed worthy of citation, was ranged side by side with the illustrious names of Papinian, Ulpian, and Paul, and firmly established among the coryphæi of the law. And when, about a century later, Justinian, a few years after his accession in A.D. 527, took his great work of codification in hand, and decided to preface his Code with an introductory treatise of an elementary character, it was to the Institutes and *Res cottidianæ* of Gaius that he looked for a model of what such a treatise ought to be. Justinian's Institutes, composed, as he tells us (*Constitutio Imperiatoriam*), “ex omnibus antiquorum institutionibus et præcipiæ ex commentariis Gaii nostri tam institutionum quam rerum cottidianarum aliisque multis commentariis,” follow very closely the order and arrangement of Gaius's work, and are, indeed, to a large extent a transcript of it, the obsolete and historical portions being omitted, and account being, of course, taken of the changes that had occurred in the law. A glance at Gneist's *Syntagma*, in which the two Institutes are printed in parallel columns, will satisfy any one as to the heavy debt which Justinian's compilers owed to the older writer. The Institutes of Justinian—in other words, the revised Institutes of Gaius—were officially promulgated on November 21, A.D. 533, with statutory force for the Eastern Empire as from December 30 of that year.¹

¹ The Eastern Empire did not at that time include Italy itself. The Code was not introduced into Italy till after the reconquest of that country by Justinian in 553, but it maintained itself there even after the further separation from the Byzantine Empire, which took place not long after Justinian's death.

Meanwhile a different fate had befallen Gaius in the West. The Western Empire, shattered by the German tribes, had formally come to an end in A.D. 476. In the German kingdoms which were founded on its ruins the system of personal laws prevailed. The Roman section of the population thus continued to be governed by Roman law. But Roman law had become obscured and corrupted during the turmoil of the preceding half-century, and some authoritative statement of its provisions was urgently called for. As in the East, so in the West, the spirit of codification was in the air; hence the various *Leges Romanæ Barbarorum* (i.e. records of Roman law for the use of the Roman population in the German kingdoms) that came into being early in the sixth century, or, roughly, about a generation before Justinian's legislation. Of these by far the most important, both on its own account and by reason of its connection with Gaius, is the *Lex Romana Visigothorum*, or *Breviarium Alarici*, compiled in A.D. 506 by order of Alaric II., King of the Visigoths, for the large Roman population of France and Spain. Like Justinian at a later date, the German King decided to introduce his code with a short elementary treatise; and, like Justinian again, he pressed Gaius's Institutes into his service. The first three books of Gaius were condensed into two, and the fourth (on actions) was omitted altogether. The historical and controversial parts were struck out. This is the so-called "West Gothic Epitome of Gaius." As edited by Alaric's commissioners, it was thought intelligible enough without the aid of an *interpretatio* such as the other parts of the *Breviarium* were supposed to require. As a statement of Roman law, Alaric's code will not bear comparison with Justinian's. The Roman law there set forth is a rude, fragmentary, barbarised Roman law. The writings of the great jurists, out of which the Digest, the most valuable part of Justinian's Code, was composed, were beyond the comprehension of Alaric's compilers. Such as it was, however, it became the standard source of Roman law for Western Europe, and maintained that position all through the first half of the Middle Ages. In the East, during the same period, Justinian's Code, enacted twenty-seven years later, held undisputed sway.

During the twelve centuries and more that followed the reign of Justinian, the history of Gaius and his works is merely part of the history of Roman law in general. The first five centuries of this period were years of more or less complete legal stagnation. In the East an age of steady decay set in. Justinian's Code was continuously pruned down and attenuated into a series of "epitomes of epitomes." In the most successful work of this class—the *Hexabiblos* of Harmenopolus, of A.D. 1345—a queer jumble of a compilation that managed, somehow, to survive the wreck of the Eastern Empire, and actually to obtain statutory force for the kingdom of Greece in 1835—Gaius is jauntily referred to as "the chief of the wise men who added other laws and actions [to the laws of the Twelve Tables]." In the West the period in question was one of dire disorder and confusion. True, the study of Roman law never completely died out, and in Italy itself the traditions of Roman law

showed a marked vitality. Nevertheless, for a long period Roman law, imperfectly apprehended as it was, led a precarious existence, and was increasingly exposed to the risks of corruption and mutilation.¹ When at last the clouds lifted; when Western Europe, confronted with the task of discovering afresh the very elements of law and political order, was beginning to find herself again, then it was that the immense intellectual force of Roman law—the Roman law, however, of Justinian's Code, not the barbarised versions of the *Leges Romanæ*—asserted itself with such striking results. During the eleventh century the great revival of the study of Roman law took place, and the fruitful epoch of the Glossators commenced. Roman law was now launched on its triumphant career in Continental Europe, and in this triumph Gaius bore no inconsiderable part—not, indeed, through the Institutes

rectly (for they, in their original form, still lay buried in an obscure library), but, in the main, through such parts of his works as Justinian's Code had preserved. So far as any distinct influence can be assigned to Gaius among all the great names that figure in the Digest, such influence is all in favour of orderly classification and system. It may, perhaps, be putting Gaius's claims a little too high to say that he has "supplied the ground-plan for all modern European codes" (Ilbert, *Legislative Methods*, p. 15); but it is quite true that, thanks to his keen sense of order and method, he has exercised a very definite influence on the shape which some of the most successful modern codes have assumed, notably the French Civil Code of 1804, itself the model for a number of subsequent codes. And it was just some twelve years after the enactment of the Napoleonic Code that the strangest of the many strangest incidents in the story of Gaius occurred, and the original text of the Institutes came to light again.

Thus we come back to Verona, and the Palazzo dei Canonici, and the queer, tarnished document before us. Somewhere in the early Middle Ages a pious scribe, being minded to record the *epistulæ* of St. Jerome, and being unable or unwilling to purchase the necessary clean parchment for the purpose, succeeded in getting hold of a piece of parchment containing some writing which to him, if he could read it at all, seemed doubtless of trifling value compared with the epistles of his saint. Having procured his parchment, he set to work to prepare it for receiving the new writing. The first thing to do was to expunge the old writing, which happened to be the text of Gaius's Institutes. Our scribe seems to have tried washing and

¹ A striking illustration of the low intellectual capacities of the age is furnished by the *Lex Romana Curiensis*, which at the same time affords us a very quaint glimpse of our author. The *Lex Curiensis* was a statement of legal custom drawn up by certain judges and ecclesiastics of the Grisons for the Romance population of the district. In the course of their labours the compilers were rash enough to attempt to quote Valentinian's Law of Citations. The result was lamentable. The law itself was misunderstood, and mutilated beyond recognition, and among the jurists named at the head of the quotation Gaius figures as "Gazius," in company with Scævola disguised as "Scifola" (Vinogradoff, *Roman Law in Mediæval Europe*, p. 13).

bleaching, and, where the old characters were too stubborn, pumice-stone, or a file, or a knife, was resorted to. Having cleared the ground satisfactorily to himself, he proceeded to superpose the new writing directly on the old, and so precious was the parchment that 60 out of a total of 251 pages had to be written over twice (*codex bis rescriptus*). By some accident one leaf—pp. 235 and 236—containing ss. 134-44 of the Institutes, became detached from the rest, and thus escaped the attentions of our scribe. This leaf was discovered at Verona by Sapio Maffei, the Italian author and scholar, who published its contents in his *Istoria teologica* in 1740. Maffei recognised the likeness of the fragment (which is mainly concerned with interdicts) to Justinian's Institutes iv. 15, but he thought it was merely a compendium of the latter work by some later jurist. He did not suspect its connection with our palimpsest, though he had noticed that the manuscript of St. Jerome's letters was a *codex rescriptus*. The first to identify Gaius as the author of the writing on the stray leaf was Haubold, in his *Notitia Fragmenti Veronensis de Interdictis*, published in 1816. It so happened that in the very same year, but before the publication of Haubold's *Notitia*, Niebuhr, while on his way to Rome as Prussian Minister to the Apostolic See, spent a couple of days at the library in Verona, during which he examined some manuscripts, including our palimpsest. He evidently suspected that something of interest might be found under the letters of the saint. An infusion of nut-galls, which he was allowed to apply to the ninety-seventh leaf of the obliterated writing, enabled him to decipher the contents of that leaf, which he took to be part of a work of Ulpian's. He communicated the result of his examination to Savigny, who at once recognised the manuscript as a work of Gaius. The whole story was told by Savigny in the *Zeitschrift für geschichtliche Rechtswissenschaft*, vol. iii. p. 129 ff., where that learned writer put forward the conjecture, fully verified later on, that the text was that of Gaius' Institutes, and that the detached leaf had formerly been part of the manuscript. The subsequent story of the manuscript, which probably dates from the fifth century, will be found in Prof. Muirhead's *Roman Law* (pp. 308-10), and in the Introduction to Mr. Poste's edition of the Institutes (fourth edition, pp. lii, liii), and it is not necessary to repeat it here. It may not, however, be out of place to pay a tribute of admiration, on the one hand, to the patience and single-minded devotion with which a number of learned men applied themselves to the infinitely laborious task of deciphering this obscure and mutilated text;¹ and, on the other hand, to the public-spirited action of the Royal Prussian Academy of Sciences in first despatching its commissioners to prepare a transcript of the manuscript, and in publishing the first edition of the Institutes in 1820, and subsequently, after the appearance

¹ May an amnesty be accorded even to the over-zealous Blume, whose disastrous chemicals destroyed more than they saved?

of many intervening editions,¹ in enabling Studemund to produce in 1874 his magnificent facsimile of the text (*Apographum*). If we can now pride ourselves on possessing a fairly complete text of the Institutes—a completer text, in fact, than that of any other work by an ancient legal writer²—it is to the efforts of these able scholars and to the enterprise of the Prussian Academy that we owe so splendid a result.³

The Institutes, as is well known, are an elementary textbook of Roman private law, dealing partly with legal doctrine and partly (and, fortunately for us, fairly liberally) with legal history. The term *Institutio* was apparently borrowed from the writers on rhetoric, who used it to describe a book designed for the instruction of students (cf. Quintilian's *Institutio Oratoria*). Gaius's work was, so far as we know, the first to appear under this name, and, indeed, the first of its kind generally, in the history of Roman legal literature. It exhibits very clearly our author's two most salient characteristics—lucidity of expression and orderliness of arrangement. The style throughout is neat, vigorous, precise. The points are stated tersely and accurately. There is no rhetoric, no redundancy. And the whole scheme of the work is carefully thought out and skilfully executed. With Gaius the love of systematic arrangement and definite classification was almost a passion. It seems to pervade the whole range of his work. He sought, as Cicero said of his friend S. Sulpicius Rufus, to treat law “with the hand and mind of an artist.” It was his constant endeavour to reduce the whole domain of law and its several provinces to an orderly system. It was characteristic of him that, when he wanted to write on case law, he did not follow the prevailing habit of compiling an undigested collection of *questiones* (p. 236) of the type of the various books *Ad Sabinum—deliramenta Masuriana*, as Fronto, the orator, contemptuously called them—but elected to proceed by way of critical notes on Q. Mucius Scævola, the famous contemporary of Cicero, whose glory it was to be the first methodiser of Roman law, the man who “*ius civile primus constituit generatim*.” It may well be that the main lines on which the Institutes were planned were not altogether of Gaius's invention, but rested largely on the traditions of the schools. That could hardly be otherwise. A treatise that holds its own as a standard legal textbook for several centuries does not spring complete from the brain of

¹ See Muirhead, *op. cit.* p. 310, note 6.

² About one-thirteenth still remains undeciphered, half of which belongs to Book IV. In the original manuscript three leaves are missing in the middle. The first of these can be to some extent supplied from the West Gothic Epitome. A kind fate has preserved the contents of the second in the Collatio (above, p. 234). The loss of the third is most regrettable, as it probably contained some much-needed additional information about *legis actiones*.

³ A palimpsest discovered by M. Chatelain at Autun in 1898 (the so-called “Autun MS. of Gaius”) was at first thought to be another copy of Gaius's Institutes, but proved, on closer examination, to be merely a paraphrase of that work (Girard, *Manuel élémentaire de droit romain*, third edition, p. 66, note 1).

any one man: it necessarily presupposes a great deal of detailed preliminary work. But whatever the extent of Gaius's indebtedness to his predecessors may have been, to him belongs the credit of having, by a wise and discriminating use of his materials, and by a keen sense of proportion in the ordering of them, presented the world with a textbook of law to which, in the words of Mr. Bryce (*Studies in History and Jurisprudence* vol. ii. p. 512), "we have nothing comparable."

The persistence with which the praises of Gaius have been sung, and the indiscriminating admiration with which his virtues have been extolled, have produced in recent years a certain amount of depreciatory reaction. It may be true, too, that the curious and dramatic circumstances in which the Institutes came to life again (at the very moment when the historical school of law was rising into prominence) have "led to Gaius's elevation to a higher pinnacle of fame than his actual merits altogether warrant" (Muirhead, p. 302). But there is no reason why his virtues should be exaggerated or his shortcomings denied. Gaius cannot be said to be a great creative lawyer of the type of Julian or Papinian, though it is only fair, in this connection, to remember that we do not possess any large work of his in a complete form that would give him an opportunity of displaying wider constructive powers. It may be that he is not a profound or erudite writer. Some of his classifications may be open to objections. His historical statements may not always bear the test of modern scientific criticism, as Kuntze, his chief assailant, seems to think they ought to do. His etymologies are as naïve as most of those of his age. Even his lucidity may be an overrated quality; for has not lucidity been described as the negative virtue of mediocre minds? But all this means nothing more than that he had the defects of his qualities and some of the defects of his time. Even after every deduction has been made, there remains a solid residuum of sterling merit which entitles his Institutes to take rank as one of the most valuable and important works in the whole range of legal literature. The discovery of the Veronese palimpsest may not have opened "a new epoch in the study of Roman law," and the "revolutionary" effects of the discovery may not have been so far-reaching as some writers have alleged. Nevertheless, it would be churlish indeed to refuse our meed of gratitude to Gaius, both for what he has done for us and for the way he has done it—that is to say, both for the wealth of legal and historical material he has opened up to us, and the flood of light he has thrown on so many dark places in the history, not only of Roman law, but of human institutions in general (and more particularly on the obscure early history of legal procedure) and also for the masterly simplicity, the deftness and finish, the "intellectual urbanity,"¹ with which he has accomplished his task.

Ihering tells us (*Scherz und Ernst in der Jurisprudenz*, ninth edition, p. 139 ff.) how once, when he was pondering the problem of *usucapio pro herede lucrativa*, it occurred to him that it might be useful if he could cross-

¹ Bryce, *op. cit.* p. 198.

examine Gaius on a few passages from his Institutes bearing on the subject (ii. 52-8; iii. 201). He accordingly proceeded there and then to summon the ghost of Gaius from Orcus. In the midst of the clouds of cigar-smoke that enveloped the professor there appeared a strange figure of a man, tall, shrivelled, slightly bow-legged, with freckled brow, and the general air of a schoolmaster. This was Gaius. It may well be that many a student of Roman law, worried by what appears to him the author's inordinate delight in the antiquities of law, in the laws of Latins and foreigners, in subtle distinctions between different kinds of legacies, in the *cretionum scrupulosa selemnitas*, has, in his first struggle with the Institutes, unconsciously formed a similar image of Gaius in his own mind, just as many a student of English law, repelled in his first wrestlings with the *Lectures on Jurisprudence* by the merciless iteration and the hammer-like irresponsiveness of Austin's style, may have gleefully recognised the aptness of Carlyle's thumbnail sketch of the "lean, grey-headed, painful-looking man with large, earnest, timid eyes, and a clanging, metallic voice" (Froude's *Life of Carlyle*, 1795-1835, vol. ii. p. 194). But in one case, as in the other, further study may lead to a revision of the first impression. The reader of Austin will come to recognise that there is more in the *Jurisprudence* than a tiresome dogmatism and a parched style of writing. In the same way, if the student of Roman law carries his labours a little farther, he may find that there is a good deal more in the Institutes of Gaius than a mere dry-as-dust antiquarianism. When he comes to the Digest, it may happen that, after a hard struggle with a passage from Julian or Africanus ("Africani lex, ergo difficilis") or Papinian, he will greet with no small pleasure the sight of the plain five-lettered name at the head of the next excerpt, well knowing that, whatever the point to be dealt with, he will be sure to find a model of terse and lucid exposition. He may then, perhaps, form a different picture of our author—the picture of a kindly, alert, keen-faced man, neat and tidy in his person (was it not he who condemned the practice of plunging into one's subject without orderly introduction?—"illotis, ut ita dixerim, manibus" [Dig. 1, 2, 1]), quickly responsive in his sympathies, readily appreciative of others' difficulties—the picture, in a word, of a born teacher. May it not perhaps be that this is a truer likeness of "Gaius noster" than the whimsical figure of Ihering's smoke-dimmed vision?

XVIII. ANDREA ALCIATI AND HIS PREDECESSORS.

[Contributed by COLEMAN PHILLIPSON, ESQ., M.A., LL.D., LITT.D.]

LAW may be investigated from various points of view—its historical evolution and its organic relation to its age, the synthesis of its dogmatic content, or the philosophical significance of its fundamental principles. Of the second and third categories there are several notable representatives in the present series of Great Jurists; the great importance and fruitfulness of the comparative and historic method will be exemplified in this and the following essays devoted to two jurists who were pre-eminent pioneers in the application of that method to the study of Romanistic jurisprudence. Alciati, kindled by the humanist movement in Italy, was the veritable inaugurator; then followed Cujas, his great disciple, who elaborated and perfected this method, and indeed surpassed his predecessor in many respects. To them is largely due the subsequent rational study of Roman law, the more accurate restoration and interpretation of its numerous texts, its scientific development generally, and its influence on national legislations.¹

Roman Law before Alciati—In the East.—During the half-century following Justinian, in the Eastern Empire, there appeared, with his sanction, numerous Greek translations and epitomes of his legal compilations, and also—though prohibited by him—commentaries and interpretations. The century after was a period of stagnation and neglect; the public law school of Constantinople was closed in 717. Then came, between 740 and 911, a brief succession of Graeco-Roman codes or manuals issued by the authority of the Byzantine Emperors. Thus we find the *Ecloga Legum* (740), the *Prochiron* (c. 878), the *Epanagoge Legis* (884-6), and, most important of all, the *Basilica* (or *Basilicæ*) (906-11). Ostensibly these works were based on the Justinian codes; in reality they were drawn from translations, epitomes, and commentaries which ultimately superseded the original texts. Thus by the end of the eleventh century the great Roman jurisprudence fell into abeyance owing to the prevalence and usurped authority of these compilations, the substitution of the Greek language for the Latin, and the ever-growing influence of the canon law.

¹ As the subjects of this essay and that upon Jacques Cujas (Journal N.S. vol xiii. p. 87). partly overlap, and the periods to some extent synchronise, the two studies are presented with the hope that they will be taken as supplementing each other; otherwise it would have been impossible to avoid a considerable amount of repetition.

In the West.¹—In order to appreciate duly the position and reformative influence of Alciati and the other humanists, it is essential to bear in mind the fortunes of Roman law in the West from the time of Justinian to the sixteenth century. This long period may be subdivided into more or less defined stages : Roman law to the middle of the eleventh century ; revival in the second half of the eleventh century mainly connected with Irnerius at Bologna ; the glossators ; the Bartolists, or commentators ; the fifteenth-century preparation for humanist jurisprudence, and the sixteenth-century humanism. An adequate treatment of this evolution would obviously demand many volumes ; but for the purposes of the present study, its characteristic features may be very concisely indicated, so as to enable us to discern in truer perspective the bearing and significance of the main subject under consideration.

(a) **Roman Law to the Middle of the Eleventh Century.**—The epoch of the last struggle between the Western Empire and the barbarians was marked by “the romanisation of the provinces and the barbarisation of Rome.”² The imperial Courts and the Roman law exercised supreme authority ; but the principle of personality, in view of racial differences and conflicting legal systems, had already begun to assert itself. In the provinces, Roman law assumed, in the hands of the barbarians, a debased and distorted form. Before the publication of the *Corpus Iuris* we find various complications, e.g. the edicts of the Ostgothic Kings, the *Lex Romana Burgundionum*, the *Lex Romana Visigothorum* (the *Breviarium Alaricianum*, drawn up in 506, as an abridgment of the Theodosian Code, by Alaric II.), the last of which, serving as a whole body of law for the Roman population of France and Spain, long exercised a great influence in Western Europe. The compilation of Justinian, some three decades later, was accepted only in the East, and in those parts of Italy which that legislator had retaken, and for several centuries was practically dead in the West. Further decay is shown in the barbarous *Lex Romana Curiensis* (end of the eighth century), a statement of legal custom based on an imperfect abstract of Alaric’s Breviary, which was used in East Switzerland, North Italy, and the Tyrol ; and again in the Romano-Germanic *Lex legum*, which embodies a miscellany of rules taken from the Edict of Theodoric, the law of the Visigoths, the Justinian Code, and barbarian law.

In the early Middle Ages, the barbarian governments could not avoid the various inconsistent mixtures in their legal systems ; and even under the

¹ Cf. for the history of Roman law in the Middle Ages, P. Vinogradoff, *Roman Law in Mediaeval Europe* (London, 1909), where the chief authorities are conveniently given. Special reference may be made to the various works of H. Fitting, and to that of M. Conrat (*Geschichte der Quellen und Literatur des römischen Rechts im früheren Mittelalter*, Leipzig, 1889-91). For the entire subject, however, previous to Alciati, the great work of Savigny (*Geschichte des römischen Rechts in Mittelalter*) still remains unsurpassed, though later contributions have in many respects amended some of his views.

² Vinogradoff, *op. cit.* p. 4.

Carolingian sovereigns, who effected therein some harmony and unity, racial differences were emphasised, the application of law became personal and local, and legislative conflicts hence obtained. Nor was the principle of personality entirely eradicated by the rise and operation of local customs, which naturally assumed a Roman, Lombard, or Frankish character, according as one or other race predominated in the region concerned. And Roman law supplied the basis of such customs in several districts, *e.g.* in Central Italy the Justinian Code prevailed, in South Italy the *Corpus Iuris* as well as the law of Justinian's successors, in South France and North Spain Alaric's Breviary applied; further Roman influence was clearly manifested also in Germany, in North France, and in England. Moreover, the compilations that were drawn up for ecclesiastical use show a great indebtedness to Roman jurisprudence: thus the *Lex romana canonice compta*, a Lombard work of the ninth century, is a collection of Roman rules for the use of the clergy, the *Collectio Anselmo dictata* is a mixture of Roman and canon law. The popes and the pontifical courts consistently maintained the authority of a good deal of the Roman civil law, and esteemed it only a little lower than the canon law. In the meantime other classes of works helped to preserve the life of Roman law; amongst these are productions like the *Etymologies* or *Origins* of Isidore of Seville, which contains extracts from classical literature, enactments, and from the writings of jurisconsults; and—what is much more important—the numerous Epitomes, *Summae* (*e.g.* the Perugian *Summa* of the Code), and Glosses¹—which were often less juridical than grammatical—on the Code and the Institutes (*e.g.* the Pistoian Gloss on the Code, the Turin Gloss on the Institutes).

Thus it is seen that Roman law, though here and there in a more or less debased, adulterated, or garbled form, persisted in practice throughout the momentous vicissitudes of the five centuries after Justinian; neither territorial conquests nor the development and supremacy of the feudal system could entirely crush it. As a science it preserved less vitality; the earlier example of the law schools of Rome, Constantinople, and Berytus proved then of no avail; such theoretical teaching and systematic study of Roman law as obtained were mainly confined to the schools of the clerical and monastic orders, and even then commonly regarded as supplementary to the study of rhetoric and preparatory to that of canon law.

(b) **A Revival in the Second Half of the Eleventh Century.**—The eleventh century was a period of transition. The religious, social, and political organisation of Europe underwent considerable change. The papacy had

¹ A gloss (*glossa*, γλῶσσα) meant originally (for example, in Greek and Latin writers) an archaic, or poetical, or foreign word requiring interpretation. Later it was referred to the explanation itself; thus Isidore of Seville uses the word in this sense, and Alcuin defines it accordingly: "unius verbi vel nominis interpretatio." With the glossators the gloss was extended from single words to entire sentences and passages, and sometimes became a running commentary.

made continual encroachments on the hierarchy and on civil governments, and now in Gregory VII. we see the great representative of its temporal claims, and the opponent of the secularisation of the Church. The feudal system was perfected. Scholastic philosophy, with its dialectics, its theological and metaphysical speculations, was established in the age of Lanfranc and Anselm, and further developed by Abelard and Peter Lombard. A juridical renaissance—preceding the revival of letters—was witnessed, and bore lasting fruit in certain localities—in South France, Lombardy, Ravenna, and Bologna. About the middle of the eleventh century a knowledge of the Pandects spread in France ; and by the side of Glosses and abstracts appeared more systematic treatises, e.g. *Petri exceptiones legum Romanorum* ("Excerpts by Peter"), a manual designed for the use of magistrates, which is drawn from the *Corpus Iuris* and refers also to the laws and customs of the barbarians ; the *Brachylogus iuris civilis*, a compendium of the Justinian law made on the model of the Institutes, and taken from the Code, Julian's Epitome (middle of sixth century), Alaric's Breviary ; and the recently discovered *Lo Codi* (c. 1149), a summary of the Code, for the use of magistrates, written in the Provençal language, and is mainly remarkable as being the first work on Roman law in a vernacular tongue.¹ As to the Lombard cities, they had grown in population, power, and wealth ; the organisation of their communes, their love of liberty and independence gave to civil and political life a new activity and new needs ; increasing commercial and private relationships demanded a civil law much more developed and consistent than that which was supplied by the various Germanic tribes. Glosses on Germanic law made more and more reference to Roman law ; and about 1070 appeared the *Liber Papiensis*, a compilation of edicts and capitularies passed by the magistrates of Pavia, which presents a mixture of Roman and Lombard law. The law school of Ravenna became conspicuous for its support of Henry IV. and Clement III. against Gregory VII., but it was soon transcended by the school of Bologna, founded by the Marchioness Matilda in order to counteract the influence of Ravenna. Pepo lectured in Bologna about 1076 ; but the most illustrious professor of the time was Irnerius,² who was designated by the subsequent glossators the "lucerna iuris." His lectures on the Code and the Institutes were a great stimulus to the study of Roman jurisprudence. His works embrace numerous glosses, *summae* (summaries, compendiums) of Lombard law and the Code, treatises on legal formulae and interpretation. He was in some respects a creator ; he was the first systematically to collate and compare texts, and establish consistent conclusions therefrom. Under him Bologna became supreme in law studies ; and thence began a continual flow

¹ See Vinogradoff, *op. cit.* pp. 60 seq.

² Irnerius (Guarnerius or Warnerius) first taught the "artes liberales," and probably began teaching law about 1088. He died after 1125.—On this part of the subject, the chief authority is H. Fitting, *Die Anfänge der Rechtsschule zu Bologna* (Leipzig, 1888). Cf. also G. Pescatore, *Die Glossen des Irnerius* (Greifswald, 1888).

of distinguished Romanists to the universities of Italy, France, and other parts of Europe; thus Placentinus did pioneer work at Montpellier, Vacarius at Oxford.

(c) **The Glossators (about 1100 to 1250).**—The immediate successors of Irnerius were the “four doctors,” Bulgarus, Martinus, Jacobus, and Ugo, who made the famous declaration at the Roncaglia Diet (1158) in favour of the Emperor Frederick Barbarossa’s right to tax the Lombard cities. Though their leaning was to monarchical centralisation as against feudal disintegration, yet their decision was due to the way they interpreted certain texts of Roman law rather than to any spirit of political partisanship. They regarded feudal law as a development of the doctrine of *emphyteusis*.¹ A distinguished pupil of Martinus was Placentinus, who taught at Mantua, Bologna, and then at Montpellier, where he died in 1192. The teaching of Bulgarus, the Chrysostom of jurisprudence, was transmitted by disciples like Rogerius and Bassianus to Hugolinus and Azo, and by these to Accursius, the head of the Bolognese glossators. Azo (died c. 1230) lectured at Bologna and Montpellier; and his gloss and *Summa* of the Institutes and Code enjoyed such great authority, especially in the Courts, that a knowledge of these works was considered indispensable to those who aspired to sit on the bench—“chi non ha Azzo, non vada a palazzo.” In England he was followed by Bracton, whose work *De legibus et consuetudinibus Angliae* is the most important British contribution to Romanistic jurisprudence. It was intended for practitioners, and was based largely on the case law of Henry III.’s age and on Roman materials derived from Azo. Similarly, in Germany appeared manuals of customary law, e.g. Eike von Repgow’s *Sachsenspiegel* (Saxon Mirror), a compilation of the law of the Saxons; this was soon followed by kindred productions, showing the rising influence of Roman conceptions. The *Glossa Ordinaria* of Accursius (c. 1182—1260) is a comprehensive collection of many previous glosses and extracts from numerous manuscripts, most of which are no longer extant; it is thus an epitome of the entire school, and as such it brings together and compares diverse scattered texts and opinions, and endeavours skilfully and acutely to reconcile seeming inconsistencies.

In general the work of the glossators was of a practical character, designed mainly for consultative and magisterial purposes. In some quarters the Courts attached thereto such high authority that it became a current maxim that the bench recognised only what the gloss laid down: “Quod non agnoscit glossa non agnoscit curia.” The *Glossae* offered elucidations and interpretations of individual texts, and were at first interlinear then marginal: sometimes they even amounted to a running commentary (*apparatus*) on an entire book. They dealt with various matters, from mere grammatical notes to important juridical theories. The *Summae* attempted a more systematic treatment of particular titles or whole books of the Justinian

¹ Cf. Vinogradoff, *op. cit.* p. 51.

compilation. In the earlier legal writings the scholastic method with its dialectical argumentation is in the ascendancy; but afterwards in the more characteristic work of this school, a more or less literal interpretation, couched in concise terms, and a marshalling of texts and opinions constitute the general mode of treatment, though the formal method is still applied in the developing of conclusions. How could it well be otherwise in an age which produced such pre-eminent masters of scholastic philosophy as Albertus Magnus, Thomas Aquinas, and Duns Scotus? However, Justinian gradually became to the new order of lawyers what Aristotle was to the old. Jurisprudence did not become, like philosophy, the servile handmaid of theology. Further, the law of procedure (*ordo iudicarius*) was set forth, and collections of controversies (*dissensiones*) and investigations (*quaestiones*) on this and other subjects were produced. All these works show their authors' knowledge of the whole Justinian body of law, except the Novels in Greek. But the writings of Gaius, the fragments of the classical juriconsults like Ulpian, and the *Basilica* seem to have been unknown to them, nor did they take account of the Theodosian Code or Alaric's Breviary; they made use, however, of the Lombard, canon, and feudal law, and of the statutes of the Italian cities. To them is due that strange division of the Digest which was usually adopted in the sixteenth-century editions—*Digestum vetus* (Bk. I.—Bk. XXIV. t. 2), *Infortiatum* (Bk. XXIV. t. 3—Bk. XXXVIII.), *Digestum novum* (Bk. XXXIX.—Bk. L.). They were not infrequently on the right line in comparing and critically examining (as Accursius in particular does) various texts, in order to arrive at the correct source. But their glaring defects, in spite of much good and useful work, were soon to bring the whole school into discredit. In the first place, trivial verbal meanings were too commonly offered, *e.g.* *quamvis* as an equivalent for *etsi*, absurd explanations were sometimes propounded, as in deriving the *lex Furia Caninia* from *canis*, Tiber from Tiberius, and in interpreting *pontifex* simply by *episcopus* or *papa*; secondly, superabundant exegesis tended to overwhelm the intrinsic content of the text; finally, historic perspective was wanting, alike in numerous details as in attributing to Ulpian and even Justinian a date prior to the Christian era, confusing Caracalla (Antoninus) with Marcus Antonius, and in more fundamental assumptions, *e.g.* that the Empire under the German rulers was a regular continuation of the Roman, and therefore subject to similar law and polity. A good many of the erroneous interpretations advanced are due to a failure to realise the historical relationships of the constituent parts of the *Corpus Iuris*.

(d) **The Commentators, or Post-Glossators.**—The glossators had done much to restore the Justinian law, but with the condensation of their work by Accursius and the almost exclusive attention paid to the latter by courts and schools, the progressive movement was checked. Texts and sources were disregarded in favour of the gloss. It was said that some even went to the length of glossing the gloss of the gloss. The school of the fourteenth and

fifteenth centuries—variously designated the post-glossators, the commentators, the *Scribentes*, or Bartolists—rose against the tyranny of the gloss. Some of the earliest representatives were found in France, e.g. Jacques de Revigny (Jacobus a Ravanis, *d.* 1296), who proved himself a formidable opponent and skilful dialectician, and his pupil, Pierre de Belleperche (Petrus a Bellapertica, *d.* 1308), who became Chancellor of France; in Italy we find the jurist-poet Cinus a Pistoia, friend of Dante, model of Petrarch, and master of Bartolus. Cinus severely condemned the blind devotees of the gloss, and declared that “glossa illa est diabolica et non vera.”¹ The Italian Bartolus² (1314—1357), who taught at Pisa and Perugia, was the acknowledged head of this school; the reactionaries regarded his authority with the utmost veneration, styled him the “monarcha iuris,” and some, like Jason, spoke of him as a terrestrial deity. Even Alciati considered him in some respects the first of jurisconsults; but Cujas had a higher opinion of Accursius. The works of Bartolus include commentaries (or *lecturae*) on the Digest and Code, treatises on public law, private law, and on procedure (e.g. *Ordo iudicii*, *De testibus*), some controversial writings (*quaestiones*), and professional consultations (*consilia*). In many quarters these writings enjoyed the force of law. At Padua a chair was established to expound the law, the gloss, and Bartolus (“lectura textus, glossae, et Bartoli”) ³; as a French writer remarks, one had almost said the law and the prophets.⁴ Other prominent members of the school were—in Italy, Baldus (1327—1406), who taught at Perugia and Pavia, and often acted in a judicial and diplomatic capacity, P. de Castro (*d.* 1438), P. de Imola, Jason de Mayno, B. Caepolla, P. Decius (1454—1535); in France, G. de Cuneo, who became a bishop, J. Faber (*d.* 1340), a seigniorial judge who was, through his practical works, called “pater practicae.” Their juristic productions, like those of Bartolus, include exegetical works, manuals of practice and procedure, casuist works consisting of *casus*, *quaestiones*, *consilia*, and systematic treatises.⁵

The aim of the Bartolists was to unite practical applications with theoretical disquisitions, to draw from Roman jurisprudence a law that would meet the needs of their time. The original sense of texts was thus often perverted; Roman elements were made to serve in the construction of doctrines which in their entirety were foreign to ancient civil law. And in this process the dialectic method of the scholastic philosophy was adopted, not indeed for the first time, but with greater thoroughness and subtlety. Paris had become, through the influence of Abelard, the leading centre of scholasticism; and, as

¹ *Comment in Cod.*, viii. 45. Cf. *ibid.* vi. 15: “Ita dixerunt doctores et glossa . . . et quotquot fuerint etiamsi mille hoc dixissent, omnes erraverunt.”

² See No. 3 of the present series of Great Jurists.

³ Cf. Savigny, *op. cit.* vol vi. p. 154.

⁴ J. Flach, *Cujas, les Glossateurs et les Bartolistes*, in *Nouv. Rev. Hist. de dr. fran. et étranger* (Paris, 1883), vol. vii. pp. 205-27, at p. 217.

⁵ Cf. J. Brissaud, *Cours d'histoire générale de droit français*, 2 vols. (Paris, 1904), vol. i. pp. 219-20.

Savigny has shown,¹ this method was first consistently applied to law by French legists in the second half of the thirteenth century, and soon after Cinus introduced into Italy the doctrine of these "moderni" (as they were called, in contradistinction to the earlier glossators, the "doctores antiqui"). Thus, while the attitude of the glossators was to some extent "humanistic" and their Roman law was more or less divorced from actual life, in the hands of the commentators there was usually a co-ordination of life and law, together with scholasticism. They correlated Roman law, though in isolated texts, with canon law and the ordinances and statutes of the Lombard cities, and in such correlation they were always mindful of actual forensic causes. The glossators had deemed the *Corpus Juris* an embodiment of the *ius commune*, the universal law of civilised mankind; but this was so on theoretical grounds. Their successors went further and imported it, in an adulterated form, into the actual legislative construction and the practical administration of justice; and so they established, as it were, a "*usus modernus Pandectarum*." Practitioners paid more heed to the "*communis opinio*" than to theory and cogent reasoning from first principles; thus the citation of authorities was preferred to the propounding of reasons. Subtle distinctions, however, as well as arguments *pro* and *contra* abound. Though the Bartolists were contemporaries of, sometimes intimate with, some of the greatest literary masters the world has ever seen, as, for example, Dante, Petrarch, Boccaccio, yet their style is marked by tedious diffuseness, prolixity, commonplace; the observation of Cujas is fully merited—"verbosi in re facili, in difficili muti, in angusta diffusi."

In Italy and France their influence remained till the coming of men like Alciati and Cujas, and here and there persisted even for some time after; in Germany it lasted much longer, indeed till the time of Savigny. In the latter country the definitive "reception" of Roman law took place in the fifteenth century; but it was an impure, glossed, Bartolised Roman law; the "*heutiges römisches Recht*" was more Roman in name than in substance.

(e) **The Renaissance of Roman Jurisprudence.**—The fifteenth century brought forth no predominating jurist like Innerius, or Accursius, or Bartolus of the preceding centuries. Circumstances were at first not favourable to legists. Intestine dissensions and the strife of political parties were frequent. The excesses of unrestrained democratic power accelerated the downfall of the Italian republics. Professors of law were not always honoured in their own countries; and so they were obliged to adopt the wandering life of peripatetic teachers, now appearing in one university, now in another. Their method of holding "*disputationes*," substantially borrowed from their predecessors, saved professorial activity from absolute barrenness. They combined practice with teaching; and in their consultations they largely used principles of Roman law. Roman law had come to be regarded as a kind of "common" law, or as a sub-

sidary law useful for filling up gaps in local legislations. Amidst the multiplicity of customs and statutes, varying from place to place, producing, through their frequent incompatibility, conflicts and confusion, the Roman body of law offered principles that might be universally recognised and adapted to promote greater unity and harmony. Moreover, it was looked upon with favour by the clergy, to whose interests it was not antagonistic, and also by sovereigns, whose aggrandisement it did not oppose. Further, the century was fruitful in momentous events, which prepared the way for a vigorous revival of Roman jurisprudence. Constantinople fell. Printing was invented, and great improvements in paper-making were effected. Libraries, manuscripts, and books multiplied. Exploration of new lands was undertaken. A deep interest in ancient civilisation was aroused; the study of classical history, literature, antiquities, institutions was more thoroughly cultivated. In Italy the literary renaissance had already established itself in the previous century. And now we find not so much jurists proper, but humanists like Ambrogio Traversari (*d.* 1439), who translated many Greek manuscripts into Latin, and recommended the study of the laws in their original sources and not in the compilations of the commentators; Laurentius Valla (1405—1457), who, in the course of his classical and philological studies, sometimes threw light on the language and phraseology of the ancient jurisconsults; and Angelo Politian (1454—1494), poet and scholar, who regarded the texts of Roman law as an invaluable product of antiquity—not only intrinsically, but also as an aid to solve problems of Latin philology—and who was one of the very earliest to apply the results of scholarship to juridical investigations, in his comparison of an edition of the Digest printed at Venice, 1485, with the famous Florentine manuscript. And now with the approach of the sixteenth century and the ever-increasing humanistic fermentation manifested in all branches of intellectual activity, and fast spreading from Italy to other countries, there appeared three men—Alciati in Italy, Ulrich Zasius (*d.* 1535) in Germany, and Budé¹ (Budaëus, 1467—1540) in France—who showed the world the grave defects of the glossators, the commentators and their legal predecessors in general, and inaugurated with greater thoroughness, consistency, and systematic application a more rational and scientific method for the study and true comprehension of Roman law. And of these men, Alciati was the greatest.

Estienne Pasquier, who commenced in 1561 the publication of his *Recherches de la France*, classified the jurists from the twelfth to the sixteenth century into three schools, viz. the Glossators, the *Scribentes* (so called, as he says, by scholars, and whom he terms “Docteurs de droit”), and the “Humanistes,” so called “pour avoir meslé en beau langage latin les Lettres Humaines avec le Droit.” He goes on to say that the sixteenth century brought forth “une nouvelle estude de Loix, qui fut de faire un mariage de

¹ His work relating to law is *Annotationes ad Pandectas*.

l'estude du Droict avecques les Lettres Humaines, par un langage latin net et poly."¹

Life of Alciati.²—Andrea Alciati or Alciato (Andreas Alciatus) was born May 8, 1492, in Alzate near Como in the Milanese. He was an only son, and his father, Ambrogio, a wealthy merchant, was a decurion (municipal magistrate or councillor) in Milan, and had acted as envoy to Venice; his mother, Margherita, was a woman of high nobility. Among his ancestors were men distinguished in Church and State and in learning. From his early youth he was devoted to studies. He received his first education in Milan, an important centre of the Hellenic renaissance. One of his masters there was Janus Parrhasius, a Neapolitan, to whom he was largely indebted for his knowledge of the classical languages, especially Latin; and among his school friends was Franciscus Calvus. About 1508 Alciati proceeded, with a view to study law, to the university of Pavia, where he attended the lectures of professors like Jason Maynus (de Mayno), who adhered for the most part to the traditional method of exposition by dealing with the "communis opinio" rather than with the legal text itself, but whose taste for ancient literature greatly influenced Alciati; Philippus Decius, who showed great skill in his vigorous disputations with Maynus; and Paulus Picus a Monte Pico, whose discourse, as Alciati wrote in 1522, was marked by labyrinthine confusedness and obscurity.³ It appears, from an observation made at Basel University by his friend, Bonifacius Amerbach, in 1526, that Alciati recognised the futility of his three years' legal course as soon as he directed his attention to Justinian's Institutes, instead of glosses and commentaries.⁴ In 1511, owing perhaps to war disturbances, Alciati removed to Bologna, and became a pupil of Carolus Ruinus. Two years afterwards, whilst still a student, he published his first work—written, as he himself says, in a fortnight—a commentary (*Annotationes*) in tres libros *Codicis* (the last three books of the Justinian Code), which filled a gap. The first nine books were well known in the Middle Ages, and were often referred to as the *Codex*; but the remaining portion, dealing mainly with public law and possessing greater historical than practical interest, was much neglected. This work not only showed the young author's knowledge of ancient literature, but—what was of more vital

¹ Liv. ix. c. 39.—The term "humanitas" as applied to the classical culture of the Renaissance is found much earlier. Thus in a medallion (made by Pisano before 1450) of Pier Candido Decembrio (1399—1477), the latter is described as "studiorum humanitatis decus." Cf. L. Geiger, *Renaissance und Humanismus in Italien und Deutschland* (1882), p. 167.

² This section of the paper is much indebted to E. von Moeller, *Andreas Alciat* (Breslau, 1907).

³ *Emblemata*, ed. 1599, p. 115, No. 96:

"Obscurus et confusus, ut Picus fuit,
Labyrinthus appellabitur."

⁴ Cf. T. Burckhardt-Biedermann, *Bonifacius Amerbach und die Reformation* (Basel, 1894), pp. 193 seq. (cited by Moeller, p. 17, n. 1).

importance—contained, in brilliant style, definitely formulated demands for a new method of jurisprudence, in harmony with humanist conceptions.¹ The following year the doctor's degree was conferred on him.

Alciati now returned to Milan, and became a member of the College of Jurists ("Collegium jurisconsultorum") with a view to practising at the bar. He was mindful of the proverbial saying—"Esto advocatus iuvenis et medicus senex"—that whereas long experience is necessary in a doctor, energy, ardour, ambition, untiring handling of authorities would stand a young advocate in good stead; moreover, as Accursius had said, "Quanto iuniores tanto perspicaciores."² The first case in which his opinion was asked was one of witchcraft. The accusation had first been brought before the Ecclesiastical Court, and the presiding bishop before delivering judgment submitted the question to Alciati. The inquisitor's allegations were parried by Alciati with urbane good humour; yet the young lawyer does not appear to have differed fundamentally on this matter from his contemporaries.³

In 1518 he was appointed professor extraordinary ("regens extraordinarius") at Avignon, for a period of two years, at a stipend of 500 ducats (about £105). At the same time Franciscus a Ripa entered the law faculty, and both of them obtained the right to confer certain degrees. Henceforth began Alciati's series of writings—his *Dispunctiones*, *Praetermissa*, and *Paradoxa*—and his great influence on the new movement in France. On the completion of his term, he was about to return to Italy owing mainly to the inadequacy of his salary; but the authorities secured a renewal of the engagement for two years more at an increase of a hundred ducats. His fame now spread rapidly throughout Europe. At this time he had an audience of some 700, including old as well as young students, lay and ecclesiastical, noblemen, abbots, and other dignitaries of Church and State.⁴ In the winter term, 1520-1, he lectured on the title "De verborum significatione," and by his learning and style roused universal admiration. Sympathetic hearers realised that Alciati invested with flesh and blood what had really been dry bones, and imparted to it fresh life and spirit. From many countries scholars sent him warm greetings and commendatory epistles. Ulrich Zasius,⁵ struck by the brilliance, erudition, and penetration of the *Paradoxa*, which seemed

¹ On this see further *infra*.

² Cf. what Alciati says in his *Parerga*, x. c. 21; in *Opera*, 4 vols., folio, ed. F. Alciatus (Francofurti, 1617), in vol. iv. col. 465.

³ *Parerga*, viii. c. 22 (*Opera*, iv. col. 424).

⁴ Moeller, p. 34.

⁵ Zasius was born in Constance, 1461, and died in 1534; he was thus much older than Alciati. He was appointed a notary of the episcopal Court in his native town, and the highest functions were afterwards entrusted to him. In 1500 he became a professor in the university of Friburg. He agreed with Alciati, as he himself avowed, on the main points, and differed only on minor details. In one respect, however, he was quite unlike his Italian friend—he was not a migratory, wandering professor, but adhered to his own university.—Cf. R. von Stintzing, *Ulrich Zasius. Ein Beitrag zur Geschichte der Rechtswissenschaft im Zeitalter der Reformation* (Basel, 1857).

to the eminent German jurist literally true rather than presumed paradoxical, wrote to Bonifacius Amerbach¹ that a mighty reformer of the study of Roman law had arisen, and expressed his readiness to fight under Alciati's flag. Amerbach at once went to Avignon to continue his legal studies. At this time (1520) Alciati also met Budaeus, and soon after began to correspond with Zasius. Thus was established that remarkable triumvirate—already designated “triumviratus constituendae rei pandectariae,” and so recognised by Erasmus, the very prince of humanists—which exercised such a profound influence on the subsequent development of scholarship and jurisprudence. “Zasius, Budaeus, and Alciati sind das Dreigestirn, das damals am Himmel der Jurisprudenz leuchtete.”² Shortly afterwards Amerbach introduced Erasmus and Alciati to each other, and many letters thereafter passed between them. Nevertheless the Italian jurist was not without opponents both in France and Italy. In 1521, owing to an outbreak of plague, the university of Avignon was closed, and Alciati returned to Milan, where he resumed his practice; but learning that the danger in Avignon was over, he went back in November. In the following spring the plague reappeared; but meanwhile his engagement terminated. A renewal was proposed to him, with the condition that his stipend should be proportionately reduced if the plague again suspended teaching. He rejected this offer and left for Milan, where he published the first edition of his celebrated book of Emblems (*Emblematum libellus*).

His practice grew fast; but his restless disposition got the better of him, and he became anxious to obtain a professorship in an Italian university, preferably in Padua. In 1523 he suffered great loss through the prevailing wars and tumults; his house was burnt down, and everything in it destroyed. In spite of his increasing *clientela* (which in a letter he jestingly describes as “clitellae,” a pack-saddle for beasts of burden), he found time for pursuing his literary activities, and for cultivating various branches of knowledge—philology as well as jurisprudence, theology and history, cookery by the side of medicine, and several other subjects. As a humanist he loved the “bonae literae” as much as the *Corpus Iuris*; he translated into Latin plays from the Greek (for example, the *Clouds* of Aristophanes), wrote epigrams, completed his *Emblemata*, and even produced a comedy (entitled “Philargyrus,” *i.e.* the lover of money). He followed with keen interest the momentous events of the time, and especially those relating to the kindred movements, the Renaissance and the Reformation. His German friends kept him in touch with the happenings in Germany; in his correspondence we find frequent references to Luther's burning of the papal bull (1520), and to the burning of his own writings; and he states that Luther's personality made a deep impression on him, though he did not admire the great reformer's invective and rough manners. Alciati never abandoned Catholicism (in which respect he

¹ U. Zasii *Epistolae*, ed. J. A. S. von Riegger (1774), ii. pp. 12 *seq.*

² Moeller, p. 38.

was unlike a good many of the humanists and legists of the time); nevertheless he was adverse to the licence of the papal court, as well as to any belief of a superstitious character and to violent assertion of authority wherever found. But knowledge, not religion, was his element.¹ Early in 1528 fresh war disorders breaking out suddenly in Milan, he went back to Avignon.

His succeeding professorship in Bourges (1529-33) marks an important period in his career, and in the development of humanist jurisprudence, particularly in France. In the Renaissance movement the decline of Italy was followed by the ascendancy of France. At the beginning of the sixteenth century Italian culture was fast passing over to the latter country; and this transference was accelerated by the intercourse and circumstances incidental to the French wars in Italy. Francis I. was a great admirer and patron of Italian art and learning; Italian artists, linguists, and scholars found a ready welcome in his court. Thus Alciati, feeling that he was already highly appreciated in France, that his new doctrines might meet there with wider sympathy and acceptance, and that the sovereign's protection might further his cause, therefore assented to the offer of a two years' engagement (the usual period) in Bourges—in succession to the Portuguese Salvator de Ferrandina—at a salary of 600 ducats, together with travelling allowance, etc. Here Alciati soon took part in numerous controversies with eminent men, for example, with Pierre de l'Estoile (Petrus Stella), a famous professor of law in the university of Orleans, and with Budaeus, particularly in regard to ancient weights and measures (on which subject Alciati had already produced his treatise, *De ponderibus et mensuris*). His lectures, inaugurated by a public *disputatio*, “De quinque pedum praescriptione,” (which was afterwards published together with the replies of his six opponents),² consisted of expositions and interpretations of certain titles of the Digest and Code, e.g. “De verborum obligationibus” and “De pactis.” Alciati now added to the number of his distinguished friends some of the leading lights of the French Renaissance, such as Montaigne; and he met with a great reception from his students, who flocked to him from all parts of Europe, especially France, Italy, and Germany, and many of whom were already distinguished, or were destined to become so. The mere mention of the names of some of them show what a remarkable concourse of men of intellect, energy, and genius listened to his lectures. There were John Calvin, Viglius von Zuichem, Karl Sucquet (the latter two having been recommended to Alciati by Erasmus, who urged them to combine literature with jurisprudence), François Connan, a friend of Calvin, Theodore Beza, J. Amyot, M. Wolmar, C. Gessner, J. Canaye, Ausonius Hoxvir, and others.³ Other notable personages came occasionally to hear his discourses, e.g. the Dauphin, and even Francis I. himself. On the occasion of the latter's visit Alciati adorned his introductory address with apt citations;⁴ he

¹ Moeller, p. 48.

² *Opera*, iii. col. 339 seq.

³ Moeller, p. 59.

⁴ Cf. *Opera*, iv. col. 870 seq.

emphasised the greatness and magnificence of Roman jurisprudence, the high respect due to it, and pointed out that even the peoples who demolished the Roman Empire gladly preserved the Roman law ("libentissime ius Romanum servaverunt"), and by way of an elegant compliment to the king ended with the lines of Ausonius addressed to the Emperor Theodosius.¹

Alciati's fame continued to extend; the number of his hearers increased from term to term. So he applied for an increase in his stipend. At the same time, however, he was thinking of Italian universities like Padua and Siena, and was negotiating with the secretary to the Duke of Milan. To the latter he wrote that teaching was more agreeable in France than in Italy, where there were among the students hostile cliques who turned up their noses at humanist culture.² In March 1531 his appointment at Bourges was extended for two years more at double the previous stipend. (His negotiations with the Italian authorities had had the desired effect.) Now publications—lectures, dissertations, translations, poems—appeared in rapid succession. The climate of the locality, however, proved uncongenial to him, and in 1532 he suffered several months' illness. This circumstance, together with disputes which arose between him and the university as well as with the municipal authorities, induced him to leave Bourges. He was urged by Bembo (then secretary to Leo X., afterwards cardinal) to go to Padua, but was not satisfied as to the amount and security of the stipend. Aurelius Albus, a delegate from Pavia, came to him from Francis Sforza, Duke of Milan, with promises of dignities and honours (e.g. that of senator) and an offer of 1,500 ducats. On the conclusion of his engagement, Alciati left for Pavia.

At the Italian university his expectations were not fully realised. Thus in his letters to Bembo he complained of the effrontery of the "scholastici," and regretted that, whereas the French and the Germans accepted his ideas with favour, the Italians received them with mockery and derision. The year 1535 is described as a most brilliant one for the university of Pavia, both as regards the lustre of the professorial chairs and the numbers of students. At this time Alciati suffered great loss through the death of illustrious friends. Zasius died in 1535. Sir Thomas More, who, like many other great humanists of the Renaissance, had exchanged letters with the Italian juristic pioneer, was executed in the same year. And in 1536 Erasmus died, of whom Alciati wrote, "cuius fama frequens totum circumvolat orbem." In the latter year appeared the first part of the *Parerga*; and also *Processus iudicarius*, a work which the publisher falsely ascribed to Alciati, as he knew too well the value of the name when placed on the title-page. Owing to the outbreak of war between the Emperor Charles V. and Francis I., Alciati's activity in Pavia was

¹ "Non habeo ingenium; Princeps sed iussit: habeo.
Cur me posse negem, posse quod ille putat."

² Hoynck van Papendrecht, *Analecta Belgica*, i. 1 (1743), pp. 73 seq. (Cited Moeller, p. 61, n. 2.)

interrupted; many students left the town; and Alciati wrote to Amerbach that only his solicitude for his mother prevented his abandoning professorship, clients, and property. At the end of 1537, however, he accepted for three years a chair at Bologna; the reduced sum of 1,200 ducats shows that on this occasion his bargaining capacity failed him. Here the unruly students, by their tricks played on him as well as on other professors, caused him much annoyance. Alciati discerned in this academic hostility or indifference a certain sign of the lamentable decline of Italian humanism. As Paolo Giovio (Paulus Jovius) said,¹ almost in Alciati's words, the flame of knowledge was extinguished in Italy about the middle of the sixteenth century, and passed over to France and Germany. In 1538, in consequence of a rumour that Alciati was thinking of leaving Bologna before the due expiration of his engagement, the Bolognese threatened to confiscate his property, and also made an appeal to the pope. However, he made new friendships, like that of Vasari (then a young painter), and so agreed to remain a fourth year at the university. At the instance of Charles V. he was then recalled to Pavia; but hostilities having arisen again (1542) between the Emperor and Francis (notwithstanding the ten years' truce agreed upon in 1538 between them and the pope), he migrated to Ferrara at the invitation of Hercules d'Este, and was there treated with great liberality and consideration. The pope, Paul III., conferred on him the title of apostolic protonotary, though it appears that Alciati had expected a cardinalate. In a letter to a friend written at this time he offers an apology for his wandering life: what with the commands of sovereigns and the tumults of war he is, he says, driven about hither and thither, and is deprived of rest and tranquillity; he thinks a book might some day be written on the peregrinations of jurisconsults and especially of himself.² In spite of his feeling unsettled he continued with his *Parerga*, and in 1543 added eight new books. Three years later he was back again in Pavia. For some time he suffered great physical pain; and his restless career was brought to an end on January 12, 1550. He was buried in the church of S. Epifanio.

His death was universally lamented. Alessandro Grimaldi expressed the feeling of all when he said at the funeral oration that the passing away of their eminent jurist laid a great sorrow on Pavia, on Italy, on France, on the whole world. It was said that with his death law itself was dead, that the muses perished. His epitaph, more modest, shows the great esteem in which he was held and the recognition of his pioneer services in restoring the study of jurisprudence to its ancient glory: "Qui omnium doctrinarum orbem absolvit, primus legum studia antiquo restituit decori."³

Alciati was a man of vigorous constitution, of over medium height, broad-chested, inclined somewhat to corpulence; his complexion was swarthy brown,

¹ In his *Historiae sui temporis* (Florence, 1550-52).

² *Opera*, iv. col. 861 seq.

³ F. Argellati, *Bibliotheca scriptorum Mediolanensium* (Mediolani, 1745), vol. i. col. 23.

and he had big, wide-open, prominent eyes,¹ thick lips, a long nose, and large ears. All these characteristics gave him a striking appearance, which could not fail to attract notice ; and his speech, accompanied (as Cardano says) by a smile which ever played about his lips, commanded the attention of his hearers.

Alciati's Writings and their Character.—Alciati's writings do not present a dogmatic or systematic treatment of law or of any other subject. They are more or less—and necessarily so, having regard to the time and circumstances of their production—of a fragmentary character, and as such they represent the life-long strivings of an ardent explorer, and the results attained by him. His aim was to demonstrate the intrinsic significance of the Roman law, to clear it from the spurious additions made by alien hands, to set it forth in the condition in which it left the classical jurisconsults, and interpret its meaning and application not through the vision of subsequent glossators and commentators, but from the point of view of the time and place of its elaboration. For this purpose Alciati did not adopt a regular, definite method either in his professorial lectures or in his literary productions. This is seen in the very titles of his writings—"Paradoxa" (paradoxes, seemingly incredible views), "Praetermissa" (things overlooked or omitted), "Parerga" (*obiter dicta*-appendices), "Dispunctiones" (examinations, investigations, revisions), "Annotationes" (annotations, remarks), and so on. Besides his voluminous commentaries on various titles of the Digest and the Code, he wrote miscellaneous treatises and contributions, such as *De magistratibus*, *De praesumptionibus*, *De ponderibus et mensuris*, *De verborum significatione*, etc. His legal opinions (*Responsa*), comprised in a posthumous publication the fourth edition of which, issued at Basel in 1582, contains some eight hundred decisions, relate to municipal law, canon law, feudal law, criminal law, wills, contracts, *privilegia*, and civil procedure. Some of these opinions throw light on important controversies of contemporary history, as, for example, the conflict between Duke Ulrich of Würtemberg and Ferdinand of Austria,² and that between Duke Henry the younger of Brunswick and Goslar.³ Alciati's interest in history is shown, apart from his devotion to ancient life and institutions, by his *Encomium historiae* (1530), though already in 1519, in his dedicatory epistle to his Notes on Tacitus, he emphasised the value and importance of historical science. In the latter work he skilfully compares and contrasts Livy and Tacitus, and, being the sound judge that he is, he has no hesitation in awarding to the latter a much higher rank.⁴ He began also a history of Milan, which reaches to the fifteenth century ; in this work, however, he does not manifest a very great critical power in the handling of the sources, but shows too strong a leaning to roam in curious interesting by-paths. "Er besass in hohem Masse . . . den Sinn für das Interessante."⁵ But his collection of inscriptions has a

¹ Argellati, *loc. cit.* i. col. 24.

⁴ *Opera*, iv. col. 876.

² *Responsa*, col. 354 seq.

³ Moeller, p. 125.

⁵ *Ibid.* col. 694 seq.

much greater value, and has been utilised by later researchers. No less a writer than Mommsen, whose authority in this category of historical documents is supreme, has declared that not only did Alciati reform jurisprudence, but he also laid the foundations of the science of epigraphy.¹ As a humanist he had a deep love for classical literature; he issued several Latin translations from the Greek, *e. g.* a version of Aristophanes' *Clouds*, and also a compilation of epigrams (*Selecta epigrammata graeca latine versa*, 1529). He wrote also an original comedy which has already been mentioned, and a number of Latin poems, the most important of which are his *Emblems*, which were widely appreciated: indeed numerous editions were published in many countries, and translations into most European languages were made in course of time. Finally he wrote a treatise on duelling (*De singulari certamine*), and the various questions arising he discusses not merely as a skilful lawyer, but as a luminous writer possessing both classical and modern culture.

His works are written in a clear fluent style, free from tedious circumlocutions, pedantic heaviness, and pompous display of scholarship. This is all the more noteworthy, as he wrote in an age not yet liberated from the influence of the scholastics and their overloaded citations. His object is to give pleasure to his readers as well as to impart instruction. As his recent biographer says: "Er will seine Leser nicht nur belehren, er will sie zugleich unterhalten."² He mingles illustrations taken from the Middle Ages and from contemporary history with those culled from antiquity; and here and there he relieves the seriousness of his disquisitions by interspersing personal anecdotes and autobiographical reflections. Thus he was perhaps the first of lawyers in whose writings we find purity and elegance of diction, and that marked personal note, that indefinable charm which characterises the cultured humanist and the true artist.

Alciati as Reformer.—Alciati took a keen interest in all branches of learning, and notably in such as were ancillary to law, *e.g.* history, philology. He followed with delight the new discoveries of ancient writings, whether of a purely literary or technical character, as, for example, those relating to medical questions. To the literature of his age as well as to that of the Middle Ages, he was a zealous adherent. He had a wide knowledge of Roman authors in general, and was especially attached to Cicero, whom he regarded as the very begetter of eloquence, "*parens eloquentiae*"; like Erasmus he cultivated a pure, terse, flexible Latin style, and, like Erasmus—though unlike so many other writers of the time—he refused to pay homage to the prevailing fetish of factitious Ciceronianism. What was a rarer acquisition, especially so in the case of the majority of preceding and contemporary jurists, he possessed an excellent knowledge of Greek, though he was not, of course,

¹ *Corpus Inscriptionum Latinarum*, vol. v. pt. 2 (Berlin, 1877), pp. 624 *seq.*; at p. 624, col. 2: ". . . Non solum iuris prudentiam reformavit, sed etiam epigraphiam ita fundavit, ut primus corpus conderet inscriptionum patriarum itaque viam aperiret."

² Moeller, p. III,

a consummate Hellenist like Budaeus; in any case he made fruitful use of his acquaintance with Greek authors and texts of Romanistic jurisprudence.

He was one of the leaders of the humanist movement, and he cherished all the aspirations and made all the high claims of his illustrious fellow-workers. To these high claims regarding the many-sided knowledge and accomplishments necessary to the making of a sound lawyer, there were not wanting replies and reproaches of opponents, who restricted their attention to the subject-matter of jurisprudence proper and had little time or aptitude for cultivating classical literature. Thus Albericus Gentilis maintained that the presumptuous humanists or "Alciatists" ("Alciatei," as he called them) were scarcely entitled to the name of jurists at all, and that jurists could get on well enough without devoting themselves to Greek and Latin letters.¹ However, Alciati throughout insisted on independence and culture as against the shackles of blind faith and tyrannous authority. He emphasised that conviction based on right and adequate knowledge, and sound judgment founded on the actual materials concerned (as the ultimate data from which valid conclusions may be drawn), are of greater import than a passive acceptance of the conclusions of scholastic exegesis, and still more so than acquiescence in the accumulated opinions of commentators merely repeating each other.² Truth, inviolable, immutable, is alone the all-compelling authority. Though he was near to becoming a cardinal, yet he denied the large claims of the pope, and even refused to accept the Bible as finally decisive.

The new method introduced in the sixteenth century into the science of Roman law is not the result of an isolated manifestation, but is at one with the general revolt of the human mind against the burdens of tradition and its accompanying abuses; it is part of the gradual efflorescence of the human intellect in all the regions of thought and belief. Thus it has a close affinity with the religious insurrection of Luther and Calvin, with the philosophic doubt of Descartes, with the scepticism of Rabelais and Montaigne, with the pioneer work of scholars like Scaliger and Lipsius, with the general literary revolt in Europe, with the efforts to reintroduce classical types of architecture, and with many other phenomena of a like tendency. In a word, it indicates the passing away from mediaevalism with its dogma and authority and stifled individuality, to modernism with its freedom, expansion of personality, and demand for the actual and real.

Already in the first of his published writings, the Commentary on the last three books of the Code, Alciati proclaims defiantly in his prefatory dedication the demands of the new method in jurisprudence, and the necessity to bring it into line with humanism. He realises that before him some effort had here or there been made to bring about an emancipation from the old incubus by appealing to the Corpus Iuris and taking refuge in it. But no one had as yet clearly indicated the desired goal and cleared the way thereto.

¹ A. Gentilis, *De iuris interpretibus dialogi sex* (Londini, 1582).

² Cf. *Opera*, iv. col. 860.

And so Alciati, though scarcely more than a youth, comes with his call to arms; he exclaims that the old traditions are going and must go, and he will show the world how to establish a new condition of things; he expects opposition, he imagines the subtle retorts of the old doctors and the noise of those who would demolish with their invective what they are too stupid to understand; he will not, however, turn from his purpose, he is courageous and hopeful in his enterprise.¹ In this undertaking Alciati was supported by Zasius in Germany, and Budaeus in France; and Erasmus declares (in a letter to Karl Sucquet) that they were the three who were instrumental in remedying the lamentable condition of the hitherto existing jurisprudence, by pointing out the corrupt and mutilated character of the texts and restoring to them their original form and meaning.²

Alciati did not eliminate from his consideration canon law, customary and local law, German, Lombard, French, or Italian; as an advocate he had frequent occasion to refer thereto. But when he speaks of jurisprudence he means, of course, Roman law; and in his view it would be the highest glory of a modern jurist to grasp it and expound it as forcibly and acutely as a Papinian or a Scaevola. Times and seasons, he says, come and go; but the Roman system remains in all its splendour and greatness,—as the ancients said, it is a work of the eternal gods.³ A great jurist is only a priest in the service of Justice. The theoretical work of explanation and construction is in many respects of greater importance than the practical work of the advocate; theory represents the captain, practice the men. And to do that work efficiently it is indispensable to go to the sources, and not to the glosses and labyrinthine commentaries of the glossators and the Bartolists (thought sometimes to consult Bartolus himself might prove profitable)⁴; in order rightly to interpret a *lex* it is fatal both to one's own understanding and to that of others to offer the inextricable maze of opinions on opinions and explanations of explanations.⁵ At best the system of exegesis may succeed in elaborating some rules and formulas, but a harmonious unified system can never result therefrom.⁶ One perusal of the *Corpus Iuris* itself is far more profitable than a whole life given to *interpretationes*, *repetitiones*, and *disputationes*. What would Justinian have said of the dialectical proceedings concerned, as they were, more with words than with things, more with dogmatic asseverations than with unprejudiced searching for truth?⁷ Return, then, to the method of Justinian if you would find your way out of the existing confusion. And again, besides going to the veritable sources, we must effect a constant alliance of the study of law with that of other relative subjects, so that the results of the latter will help to explain or reinforce, or if need be modify, the conclusions

¹ Cf. *Opera*, iii. col. 479-80.

² Erasmus, *Epistolae* (Lond. 1642), col. 1262-3.

³ *Opera*, iv. col. 849.

⁴ *Ibid.* col. 868.

⁵ *Ibid.* col. 73 (*Paradoxa*, iv. *prooemium*).

⁶ *Ibid.* col. 866.

⁷ *Ibid.* col. 860.

of the former. On account of the unity of knowledge and essential correlation of its branches, the subsidiary subjects in question will be numerous; but some are of especial importance, *e.g.* history, philology, literature ("bonae literae"). And, reciprocally, sound conceptions of law will prove an invaluable aid to the attaining of a fuller and more rational understanding of each of these subjects. Hence the philologists, the "grammatici" who confine themselves to verbal constructions, very rarely discern the right meaning of legal passages, and the fundamental import of the law set forth¹; thus Angelus Politianus was once laughed at by Socinus for not knowing the real meaning of "suus heres."² As to the glossators and commentators, Accursius, Bartolus, and their associates, not once did they even sip of non-juristic knowledge.³ True jurisprudence, indeed, necessarily embraces, or is closely related to, all other sciences: "Haec ars ceteras omnes in se continet,"⁴ and so is, in a sense, pre-eminent. The comparative method, therefore, of Alciati aims at revealing the indissoluble connection of the Corpus Iuris with the entire ancient culture, by making systematic use of mutual illustration and exemplification; and the sound application of this method consequently demands many-sided knowledge. The exaction of such high qualifications is perhaps not so unreasonable in an age which produced men of universal genius like Leonardo da Vinci, Leo Baptista Alberti, Michaelangelo. As to the history of Roman law, however, Alciati thought there was then little prospect of successful results; in the earlier period more particularly only suppositions and conjectures are possible; for that part of the subject is clouded in obscurity, and what there is of it is but a feeble shadow.⁵ He was but little concerned with pre-Justinian sources, and scarcely realised how much early Roman law is embodied in the Corpus Iuris.

In conclusion it may be said that Alciati certainly did not accomplish as much as his methods and projects promised. He was one of those—like our own Coleridge, for example—who design much, but leave only a few fragments—fragments, however, destined to prove of the greatest influence and a vital inspiration to his contemporaries and successors. He restored texts, showed how they were to be interpreted, from what point of view they were to be regarded, how they were to be related to the life and thought of the time which brought them into being. No doubt he committed mistakes, some of them the errors of an explorer, others inherited from inveterate tradition; but his fundamental intention, namely, the establishment of a rational scientific method, was fulfilled. He more than any other jurist has a right to the title of founder of the humanist method; to him is due the rise of the great French school of jurisprudence in the sixteenth century, with, on the one hand, systematisers like the eminent Doneau, and, on the other, humanist investigators and restorers like Cujas, the real juristic coryphaeus of the century.

¹ *Opera* iv. col. 275.

² *Ibid.* col. 753.

³ *Ibid.* col. 443 *seq.*

⁴ *Ibid.* col. 191.

⁵ *Ibid.* col. 852.

XIX. ROBERT-JOSEPH POTHIER AND FRENCH LAW.

[Contributed by J. E. DE MONTMORENCY, ESQ.]

ROBERT-JOSEPH POTHIER was born in the town of Orleans on January 9, 1699, and he died there on March 2, 1772. He came of an Orleans family of good position that had for generations exercised magisterial functions in the town. His father was Robert Pothier, his mother Marie-Madeleine Jacquet. Robert Pothier held the magisterial office of Conseiller au Présidial d'Orléans, an office that his son was destined to hold, and which his father Florent Pothier, had held. He was descended from the Florent Pothier who was Mayor of Orleans in 1603. Robert Pothier died when his son was only five years old, but the influence of the future jurist's mother determined that his career should follow the hereditary legal bias. The child was educated at the Jesuits' college at Orleans, and there, despite his feeble health and poor instruction, he made rapid progress in Latin literature, the humanities, and ancient philosophy. His fine memory, his ease of acquisition, and his application made him, indeed, at an early age a master of the classical studies of his age. When he passed from the Jesuit college, he hesitated for a moment as to his course. He was naturally attracted to the study of mathematics and pure thought; on the other hand, the legal tradition was in his blood, and he was strongly urged by his mother and by his father's friend, the Provost de la Jauné, to follow the family tradition. In fact, as we shall see, he both followed that tradition and indulged to the full his capacity for pure thought. He joined the law school of the University of Orleans, at that date according to M. le Trosne,¹ in a deplorable state. "Les Professeurs qui occupoient alors les Chaires de l'Université, absolument indifférens aux progrès des jeunes gens, se contentoient de leur dicter quelques leçons inintelligibles, et qu'ils ne daignoient pas mettre à leur portée." The King's Advocate goes on to describe the method in which law was taught at the beginning of the eighteenth century by the professors:

"Ce n'étoit pas proprement la science du Droit qu'ils enseignoient: ils ne présentoient de cette science si belle et si lumineuse par elle-même, que ces épines et ces contrariétés qui lui sont étrangères, et qui n'y ont été introduites que par l'incapacité et la mauvaise foi des Rédacteurs des Pandectes. Au lieu d'expliquer les textes d'une manière propre à instruire, ils ne remplissoient leurs leçons que de ces questions subtiles, inventées et multipliées par les controversistes.

¹ M. le Trosne was the Avocat du Roi au Présidial d'Orléans at the date of Pothier's death in 1772. His *Éloge Historique de M. Pothier* is prefixed to the edition of Pothier's works issued jointly at Paris and Orléans in 1781 in four volumes. Three other volumes (Paris, 1777, 1777, 1778) contain the posthumous works, and with the other four, contain the authentic text of all the works,

"A cette manière d'enseigner, on auroit pu croire qu'ils n'avoient d'autre objet que de fermer pour toujours le sanctuaire des Loix aux Étudiants, par le dégoût qu'ils sçavoient leur inspirer; semblables à ces anciens Patriciens, qui, pour tenir le peuple dans leur dépendance, lui cachotent avec un si grand soin les formules des actions, et s'étoient approprié la connoissance des Loix, qu'ils avoient soin de voiler sous une écorce mystérieuse. Un enseignement si peu instinctif et si défectueux ne pouvoit satisfaire un esprit aussi solide et aussi juste que celui de M. Pothier: heureusement il ne fut pas capable de le rebutter; il en sentit les défauts, et suppléa, par son travail, aux secours qui lui manquoient. Dans toutes les sciences, ce sont les premiers pas qui sont les plus difficiles; il les franchit seul par l'étude sérieuse des Instituts, dans laquelle il s'aida du Commentaire des Vinnius,¹ et se prépara à aller puiser à la source même du Droit, par l'étude la plus profonde et la plus suivie des Pandectes."¹

He passed brilliantly through the various stages then necessary in the University to qualify for the Bar and the Magistracy. The difficulty of the material with which he had to deal, and the poverty of the teaching, served but to stimulate his great powers, while his close study of the Institutes of Justinian in the pages of Arnoldus Vinnius inspired him with a profound interest in the law and history of a people with whose literature he was already intimately familiar. Yet when all the examinations were passed, he was faced, according to M. le Trosne,² once more by the parting of the ways. His profoundly religious mind and his unworldly nature were greatly attracted by the religious life, and at this time (about 1720) he almost decided to enter the Order of Regular Canons, and was only deterred from this step by his close attachment to his mother. He then finally determined to adopt the law as his profession, and his immense knowledge justified the local ordinance by which, at the age of twenty-one, he was nominated to the same magisterial position that had been occupied by his father and grandfather, Conseiller au Présidial d'Orléans. His position determined finally not only his avocation, but his course of work. To the study of the theory and history of law he turned all his powers, while at the same time, in the chambers of M. Perche, the most learned and brilliant advocate in Orleans, he obtained a close knowledge of actual practice. It is important to dwell on these early stages of Pothier's career. The fact that with him (as with Savigny at the end of the century) ceaseless toil at the history and theory of law was coupled with assiduous attention to law in actual practice gave a value to Pothier's work on French law and the principles of law that will never be lost.

In the ten or twelve years following his appointment, he combined with the study and the practice of law a close consideration of the basis of theology. His favourite author was St. Augustine, but he joined the Port Royalist

¹ *Commentary on the Institutes* in four books. A further edition of this work was issued in 1755 in two volumes, by Gottlieb Heineccius.

² The fact is not mentioned in the admirable article on Pothier in Larousse's *Grand Dictionnaire Universel du XIX^e Siècle*. There the only crisis mentioned occurred before he entered the University.

school of thought, and found in Pierre Nicole (1625—1695) that combination of vast learning in philosophy and theology with profound reverence that exactly fitted his own mind. Nicole closely approached the Jansenist position, and in this particular Pothier went past his master, and became a Jansenist, a fact never forgiven by the Roman Catholic Communion in Orleans, who even refused him burial room in the cathedral of the city that he had adorned. The study of theology Pothier maintained all his life, and the fact has to be kept in mind in considering his whole position, since his attitude towards theology was really his attitude towards law. The right to think and the duty to think clearly on all subjects was the claim that made him one with the great Post-Royalists, and a symptom of the change that was passing over France.

It will be convenient here to sketch as briefly as may be the juridical and judicial system into which Robert-Joseph Pothier was born, for it was from his practical experience of this system that he drew that knowledge of affairs which gives such a profound value to his work. The long story of the reduction to writing and revision of French customary law, a work that began with the edict of Charles VII. in 1453, and had been for the most part achieved after titanic labour by the end of the century—though some districts lingered on under unwritten customary law until the middle of the eighteenth century—cannot be dealt with here. It is sufficient to say that the Custom of Orleans was revised and reduced to writing by Achille du Harley and his school in 1583. The Dalloz brothers, in their *Essai sur l'Histoire générale du Droit français*, dwell enthusiastically on the marvellous work that was accomplished when the teeming customs of France were in effect codified. "Car c'est peut-être le plus grand travail législatif qui ait jamais été accompli. On ne peut mettre en parallèle ni la composition des compilations justiniennes, ni même le travail bien supérieur de la rédaction de nos codes. Bien plus, la rédaction des coutumes n'est même pas mise parmi les titres de gloire de l'esprit juriste français, et cependant c'est peut-être le premier."¹

The codification was opposed by the magistrates of the local courts, the bailliage, and the *sénéchaussée*, but it was carried through exhaustively, and both actual practice and all the customary books containing recorded cases—*Le Livre coutumier du Greffe*—were examined with detailed care.

First we must obtain some general notion of the customary law of France after the sixteenth century. The law of persons is full of interest. All persons dwelling in France were, from the date of the Ordinance of Louis X. of July 3, 1315, free persons, though, until the eve of the Revolution, this rule of law did not apply to black persons imported from the colonies. There was no *Sommersett's case* that changed or declared the law in France.² Free men were classified into Frenchmen, naturalised aliens, non-naturalised

¹ *Essai sur l'Histoire générale du Droit français*, p. 135.

² Cf. *Édits*, October 25, 1706, Art. 5, and December 15, 1738: *L'Arrêt Roch, rendu sur la plaidoirie d'Henriou de Pausey en 1770, fut le premier qui décida le contraire.*

strangers (*ou aubains*). Naturalisation was a State act under the great seal, and persons naturalised had the same rights as Frenchmen. Non-naturalised aliens could neither succeed to property nor make a will. For a long time their heir was the King, but it was eventually held that their children, if born in France, could succeed to their estate. All subjects were nobles or roturiers, while all roturiers were bourgeois or villedin.¹ Both these latter classes were subject to seignorial authority, and held their property subject to charges; but the bourgeois formed a definite community, enjoying privileges accorded to their commune, and governed by their own magistrates. They were serfs, but they were continuously assisted by formal enfranchisements up to the end of the *ancien régime*; while, in fact, the servile, apart from the taxable, condition of those who remained unfranchised had become almost imperceptible. Nobility was acquired by birth, by marriage, or by the gift of the Prince. In most customs nobility only descended through the father, though some districts recognised uterine nobility, the descent through the mother. About the fifteenth century the idea of the holding of office conferring nobility was entertained, and a little later an ordinance of 1470 declared that in Normandy the fact of holding a fief involved nobility; and when the right to hold fiefs was extended to all, the nobility was open to all. And thus there grew up a nobility of place and land in addition to a nobility of race, and at the time of the fall of the monarchy there were many marquesses and counts who were, in fact, not of noble blood. The nobles possessed various privileges of jurisdiction and exemption from *la taille*. The roturiers who held land had to pay to the Crown a fine, called the "grave fief," but various provinces and towns were exempt from this, Paris having been exempt since 1371.

The age when majority was attained differed for nobles and roturiers; indeed, it varied even in the case of the nobility, for the minor possessor of a fief had two minorities, one feudal, the other customary. By the feudal law the vassal came into possession of his fief at from eighteen to twenty years for males, fourteen to eighteen years for females. Up to this age the minor was in the power of his or her guardian. We must not confuse this period of majority, which only referred to feudal rights and services, with the customary majority, which related to non-feudal matters. This was ordinarily fixed at twenty-five, in imitation of the Roman law. The noble guardian acted in feudal matters, the bourgeois guardian in other matters. Some customary areas refused to recognise the bourgeois guardianship; others, such as Paris, limited it to certain districts. It could only be held by parents; it ended at fourteen for males and twelve years for females; it ceased when the guardian remarried—a rule revived in the Civil Code of to-day. It was a profitable office, and the noble guardianship was certainly not less valuable.

¹ Roturier, "a plebeian"; *lit.* a peasant, who holds a *roture*—i.e. villedin-land; from *Ruptura*, the act of breaking (clods) and hence of cultivating fields. Thus *Rupturarius* becomes *Roturier* (see A. Bracket's *Etymological Dictionary of the French Language*).

In addition to these guardians, there was the tutor, and we find him from the thirteenth century both in the districts of written law and the districts of customary law. This creature of Roman law appeared in the districts possessing a written law in the various varieties of the Roman law—Testamentary, Legitimate, Dative; while in the districts governed by customary law only dative tutors were appointed. The customs recognised the gatherings of relations, called *Conseils de familles*. Tutors were nominated at these gatherings.

The question of marriage is important. Customary law did not deal with it as a contract, this being left to the Canon law; but custom regulated the position of the wife, and the civil duties imposed on both spouses. The wife was in the power (*manus*) of the husband. She could not sell his goods, or bind herself by contract, nor suffer judgment, without his authorisation, unless she was separate from him or was a public trader. He administered his wife's goods; he held her lands, though he could not alienate them without her consent. In some provinces (Artois and Auvergne) simple betrothal put the daughter into the power of her future husband. Under most customs marriage emancipated the spouses from parental power, but by many customs (Normandy, Auvergne, Burgundy) the wife alone was emancipated; in other provinces the roturier (plebeian) only became emancipated a year and a day after marriage in a separate home. In Bourbonnais (confiscated to the Crown by Francis I. in 1531) the father, when consenting to the marriage of a minor son, could stipulate that he remained in his father's power. In the districts governed by customary law the wife did not bring, and in the districts governed by the written law she did bring, to her husband a *dot* in the Roman sense (*dos*). In fact, in some cases in the customary districts the *dot* consisted of two sums, half contributed by each family, the husband's contribution being called *un augment de dot*. In the districts under the written law there was, of course, the *donatio propter nuptias* given by the husband. The wife's dowry varied according to the custom. In some provinces the widow had one-half of the immovables that her husband possessed at her marriage, or what had descended to him since the marriage. Brittany, Normandy, Maine, Anjou, Poitou, fixed the dower at one-third, without distinction between nobles and roturiers. In Artois the dower was half of the lands and half the plebeian goods. In some districts dower depended on marriage, in others on consummated marriage; in some districts the dowager had the seisin of the land, in others she had to demand it of the heirs. But it became due only on the death of the husband, though on his civil death and on various other cases the wife obtained a charge on his goods, called *mi-douaire*. Sometimes the property of the goods, the use of which formed the dower of their mother, was in the children. In other words, the widow had a life interest only. In this case the children had to choose between the succession of their father and the dowry of their mother. They could not succeed to both.

The dower passed equally among the children. It is the fulfilment of a contract, so to speak, that the father had entered into with his wife and future children by her. Dower has not passed into modern French law. The sole vestige of dower custom in the Code is in Article 1465, which accords to a wife accepting or renouncing her costs of living during the three months and forty days which follow the dissolution of community of goods. The doctrine of community of goods obtained throughout France, with the exception of Normandy, Auvergne, and the Haute-Marche. The spouses jointly owned from the day of marriage all the movable property, all the immovable property acquired during the period of community, and all the proceeds of the joint property, and they were jointly responsible for the debts of either. In some districts community of goods began with the betrothal. The doctrine of community could be excluded by mutual agreement before the marriage, or an unequal division of the property at the end of the marriage could be arranged. This variation of the original strict custom was apparently introduced with marriage settlements in the fourteenth century. In the districts governed by customary law it often happened that the principle of community was incorporated in the marriage settlement, but where the principle of community was forbidden (as it was by the custom of Normandy) this could not be done. This was in some cases avoided by a declaration by the parties that they were bound by the custom of Paris, which in a sense was the common law of France; but the practice was held to be ineffective in Normandy. By the custom of Normandy the wife had certain rights of succession to her husband; thus she had a right to one-half of immovables acquired *en bourgage* during the marriage, and she had also a right to half the movables. The husband had a right to his wife's movables, but half could be used solely in the purchase of immovables. The *dot* was inalienable, and passed to the wife on the husband's death, as well as the above right of succession, or, in the alternative, her husband's *paraphernalia*. If the husband survived, he had a life estate (usufruct) whilst unmarried (if there had been a child born alive) in the income of his wife's property. If he remarried, his life estate was reduced one-third. The law of Normandy, M. Laferrière suggests, was an amalgam of Scandinavian, English, and Neustrian law.

In the case of the common law of community the husband could dispose of all the common property *inter vivos*; he could by his will only deal with his share. On the dissolution of the marriage the wife could accept or renounce the community. If it was not renounced, it continued with the infant children, provided that this was for their benefit. On remarriage each party took a third interest in the community property, and the children of the first marriage the remaining third. The thirds became fourths if the new spouse had already got children; while the thirds became sixths if both parties had children by both marriages. The *jus accrescendi* applied as between brothers and sisters. But the details of the

law of community varied very greatly, and often only applied to the *roturier* class.

When we consider the general doctrine of rights of property under the feudal law in France, we find in the age when the customs were reduced into writing that the great principle of division into movables and immovables still subsisted, that some property was *noble* and some *roturier*. Land (or immovable property) consisted of fiefs, of lands subject to seignorial rights, of lands free of lord (*alleux*). The last were rare in the customary districts, where the maxim ran, "No land without a lord." These types of land-holding gave rise to a most complicated land law and an almost inexplicable system of land charges, that in some cases ran with the land. The French law of land has not yet received the attention of a school of jurists at all comparable with the school created by Maitland in England. The French doctrine of seisin or possession was originally of extraordinary elaboration, and throws much light on the analogous doctrine in England.¹ The doctrine had certain applications to movables that are of interest if considered in connection with the earliest doctrine of seisin in England. It is not possible here to trace in detail the French law of seisin or the law that regulated property in its relation to the family, a phase of law that scarcely passed the Channel. One may perhaps, however, say one word as to the feudal doctrine of *amortissement*—the freeing of land from feudal burdens. In every case this required under the customary law the consent of the successive overlords up to the King himself. Hence it became a doctrine (despite the resistance of lower lords) that the King alone had *le droit d'amortis*. As this doctrine had special application to persons, the enfranchisement of serfs was a royal prerogative, though the lords had a right to claim an indemnity from the freed men.

When we turn to the law of succession we find that in the districts governed by the written law succession was governed by the law of Justinian (*Novellæ*, pp. 118, 127), while in the places subject to customary law there were endless customs as to succession. The main distinction in the customary law was between succession to fiefs and lordless land of noble origin on the one hand, and all other property of any origin on the other. With respect to the fiefs, the principle of primogeniture applied, though not always the primogeniture of males, as is seen from the customs of Anjou, Poitou, and Touraine. Throughout the north of France this principle is attached to the land itself. Thus, if non-nobles acquired land which gave them a title without ennobling them, the "nobility" of the land, so to speak, set the principle of primogeniture at work; while, on the other hand, if land were possessed by a noble which nevertheless was not "noble land," the principle did not

¹ The French lawyers used the technical words "vest" and "devest" to indicate the process by what, on a transfer of property, the old possessor had to suffer disseisin, and the new possessor had to prove the process by which he became seised.

apply. The full elaboration of the customary laws of succession can be gathered from Dalloz. One may note that the customary law recognised wills; will-making was only forbidden to the serf in the period after the writing down of the customs. But the power was limited under different customs differently: it might be a third or a fourth, or even the whole, that came under the will of the testator. The property that could not be disposed of by will passed to the customary heirs. Again, the persons to whom the property could be left were limited; the will was subject to *la légitime*. Thus, under the custom of Paris, a child had a right to the one-half it would have had if the parent had died intestate.

Something must be said as to the customary and written law of obligations, a subject that owes so much to Pothier. The customary law of France adopted from the thirteenth century the Roman law on the subject of obligations. The jurists of the sixteenth century developed the modern theory of contracts, as it is set forth in the French code. We should note that many customary codes recognised communities as property holders—companies, as we should say. Quite early it was recognised that a sale by legal authority gave a good title to the property sold. The laws of the Church condemned the whole notion of interest on money, but this doctrine, which obtained until the law of October 2, 1789, was evaded in various ways. The mortgage, though repeatedly condemned, came into general use in the early Middle Ages, and held its ground. The enfranchisement of the serfs threw much labour on the market, and gave a larger activity to the contract of service.

When we enter the sixteenth century we find the King all-powerful; the dangerous vassals, as well as the practically independent republics known as "communes," have disappeared. We have towns under local government; we have trading companies, such as the Merchants of Paris, gaining great influence; we have the universities and other great corporations—all forces changing the face of society. We see a reigning house controlled by the hereditary principle, and ruling over inalienable but taxable lands. In this society individual liberty, despite the sittings of the States-General, had no guarantee; the *lettre de cachet* was in active use to the end. On the other hand, property was adequately protected by the King, despite the weight of occasional taxation. From the sixteenth century onward the King was supreme as legislator and administrator, and the written and the customary law was supplemented by Crown Ordinances.

The Ordinance of Villers-Cotterets (in August 1539), of Orleans (1561), of Roussillon (1563), of Moulins (1566), the Ordinance of Blois (May 1579), really formed a supplementary code dealing with (1539) the administration of justice and forms of procedure, (1561) the clergy, with general administration, (1563) commercial law and judicial administration (the civil jurisdiction of the communal judges was abolished in 1563), and (1566) powers to the Crown to create territorial dignitaries, (1579) religion, education, the adminis-

tration of justice, Crown servants, Crown lands, taxation. The same age saw many ordinances dealing with religion. In the sphere of law we have seen that customary law had already become fixed. The ordinances of the sixteenth century amended legal machinery with great elaboration, but they did not deal with the status of persons or the rights of property, though they dealt in some measure with property in connection with the family regarded as an entity.

But the ordinances had the effect of unifying the whole system of customary law, of stamping upon it the specific national character which, despite its indebtedness to Roman and Germanic influences, was and is nothing by itself. So we see a judicial and administrative system arise capable of moulding customary law into its final form, while the law as to family life was rounded off and made complete. Thus, in February 1556, Henry II. forbade clandestine marriages, and introduced the famous rule which still protests that a person under patronal power cannot contract marriage without the consent of his relatives. It was not possible in that age for such a marriage to be declared null, but it was possible to deprive the spouses of all the advantages of their family system, to disinherit the child, to revoke all premarital gifts, to cancel all rights of succession. Many other provisions as to the form of marriage date from this time. The rights of second husbands in the fortune of their wife was strictly limited by ordinance (1560, 1579), and these provisions are repeated in the code of to-day (Art. 1098).

The Ordinance of Moulins (1566) introduced a profound change into the law of evidence by the substitution of written for personal evidence in all classes of evidence where strict proof (as of birth, marriages, death) is necessary. It was this period, too, that gave to the legal system adequate officers to carry the law into effect. Thus there existed in the sixteenth century (*a*) notaries of the Crown, (*b*) notaries of the seigneur, and (*c*) apostolic notaries to deal with questions of the Canon Law. The ordinances regulated the form of notarial acts. The notary or the parish priest had to take a part in the formality of will-making. Again, we see by 1579 a regular class of counsel (*les avocats généraux*), and a regular class of solicitor (*les procureurs généraux*), undertaking argument and the preparation of cases. There was also by this date the class of counsel exactly equivalent to our King's Counsel (*les avocats du roi*).

The idea of codifying the entire French law was in the mind of Henry III., and, in fact, Brisson in 1587 issued his draft *Code de Henri III.*; but this, though revised in the reign of Henry IV., never acquired the force of law.

The period of the great ordinances (1539-79) was the begetter of an age of great jurists. The French Renaissance school of law may be said to begin with the Roman lawyers, Alciati (1492—1550), who taught at Avignon and Bourges, and his pupil, Cujas (1520—1590), and Doneau (1527—1591), the first of the purely philosophical jurists; Jacques Godefroy (1587—1652), who

edited the Theodosian Code ; and Denys Godefroy, who annotated Justinian, Douaren, Govean, Hotman, Brisson, and Pierre Pithou (pupil of Cujas). The work of these Roman lawyers laid a basis for the study of French law. The first scientific student of French jurisprudence was the indefatigable Charles Dumoulin (1500[?]-1566).

"L'ardeur au travail du Dumoulin était extrême ; on le sait par des témoignages irrécusables d'ailleurs, et le caractère et l'immensité de ses productions l'attesteraient suffisamment. Elle eut pour objet toutes les parties du droit : le droit coutumier, le droit féodal, le droit romain, le droit canonique et l'histoire ; mais c'est surtout vers le droit coutumier, le droit féodal et la matière des obligations que se dirigèrent ses efforts."¹

He taught law chiefly at Dôle, but his impetuosity in public affairs drove him into exile, and much of his work was done abroad. His greatest work was his commentary on the customs of Paris.² The first great title is *De Feudis*, comprising seventy-two sections, and occupying 1305 great double-column quarto pages in small type. The second title is *De censu et juribus Dominicalibus*, dealing with the obscure law of seignorial rights. This contains twenty-three sections, and takes us to p. 1619 of the first volume. The remaining titles were published after Dumoulin's death : (3) *De complainte en cas de saisine et de nouvelleté* ; (4) *De præscriptionibus* ; (5) *De personalibus et hypothecariis actionibus* ; (6) *De servitutibus realibus, urbanis et rusticis* ; (7) *De testamentis, donationibus, legatis, et executoribus testamentorum* ; (8) *De custodia nobili* ; (9) *De custodia paganica* ; (10) *De communione bonorum* ; (11) *De successionibus in linea directa* ; (12) *De Doariis* ; (13) *De successione in linea collateralis* ; (14) *De donatione mutua inter conjugio* ; (15) *De pignorationibus, sequestrationibus, et executione sententiarum et instrumentorum* ; (16) *De retractu jure proximitatis* ; (17) *De subhastationibus* ; (18) *De cæteris consuetudinariis*. With this last title the first *tome* ends at p. 1795. The second *tome* gives us a lengthy treatise on the French law of contracts and rents and loans. The third *tome* still deals with French law, and includes a tract, *De l'origine, progresz, et excellence du Royaume et Monarchie des François*. The fourth *tome* is largely filled with tracts on Roman law, but also deals with the ordinance of 1539. The volume of work is enormous, and it forms a magnificent storehouse for research in late Medieval French law. The study of Charles Dumoulin necessarily lies behind any adequate conception of the work of later French jurists or of the evolution of French law. Moreover, the sidelights on English law are, we must believe, of profound importance.

Two treatises in the fourth *tome* are of great importance from the point of

¹ *Essai sur l'Histoire du Droit français* (Dalloz), p. 215, on which this historical sketch is based.

² See the collected edition of his works in four volumes, *Caroli Molinari Franciæ et Germaniæ celeberrimi juris consulti . . . Opera quæ extant opera*, Paris, 1658, with a life of the author prefixed to the first *tome*.

view of modern law: the treatise *De Verborum obligatio* (p. 128), and the treatise *Extricatione labyrinthi Dividui et Individui*. Of this latter treatise the essay above referred to says:

Dans son traité de *Dividuo et Individuo*, Dumoulin crée, on peut dire, la théorie française de l'indivisibilité des obligations, et Pothier a pu se borner à coordonner les doctrines de Dumoulin pour en faire sortir la doctrine qu'il expose dans son traité des obligations, et qui devait venir se condenser dans deux articles du Code Napoléon.

The other jurists of this great juridical period were the Breton feudalists, D'Argentrée (1519—1590); Guy Coquille (1523—1603); Charondas (1536—1617), the authority on French customary law; René Choppin (1537—1606), who specialised on the custom of Anjou; Chassaneux (1480—1541), an authority on Burgundian customs; Loysel (1536—1617), an authority on customary law; and Loyseau (1566—1627), the latest and perhaps the clearest exponent of the French juridical system.

A word must be said as to the royal ordinances of the seventeenth century, for they show the royal authority at its height unhampered by powerful feudal lords or by religious turmoil. Under Henry IV. the whole country, its finances, its industries, its agriculture, and its defences, were reorganised, and the manifestations of constitutional life that came into being at his death were less a sign of the decay of kingship than of the growing sense of national unity and efficiency. Richelieu (in 1644) forbade the Parlements and other courts of justice to interfere in public affairs. Mazarin was not slow to adopt the same policy, and it was rather by strength of policy than anything else that the code of constitutional liberty set forth in that significant year 1648 did not become law. Louis XIV. was strong enough to reduce the Parlements to their judicial functions, and his reign gave to Frenchmen the glory that sometimes is an apt substitute for liberty. In 1692 the Crown announced the existence of a right of eminent domain with respect to all land in the kingdom. There were to be no more allodial lands; the English doctrine that there is no absolute right to land in any subject was adopted. The King thus resumed his strictly feudal position as *le seigneur suzerain*. During the century the distinction between *les biens nobles ou roturiers* was maintained, and the latter only were subject to the *taille*. The domain rights were maintained, though they were often confused with the seigniorial rights.

This is not the place in which to discuss the legal position secured by the Church in this age, though it should be noticed that the declaration of the clergy of 1682 laid the basis of the whole system of *concordats* between Church and State. The civil ordinances of the century left the customary law standing, but the law of obligation was largely affected; whilst in 1667 French civil procedure was codified, and in 1673 the commercial law of France received complete treatment. In the essay on the history of French

law to which reference has repeatedly been made, we have a careful account of the legislation as to obligations. In 1606 the application of the *Senatus Consultum Velleianus* to French law was forbidden by the Parlement of Paris, and this position was largely adopted in the districts subject to customary law. The reform of procedure in the century was attempted by the code or ordinance of 1629, in itself ineffective, and the last of the many attempts at codification that distinguished the sixteenth century. A new codification movement with respect to procedure began with the ordinance of 1667 on civil procedure, which was the basis of the code of 1806. It also dealt with the question of proof. A further ordinance came in 1667. In 1670 the code of criminal procedure was issued, to be followed in 1673 by the commercial code, drafted by Savary. The last thirty years of the reign saw little more legislation. In twenty years Louis Quatorze had done enough to earn, if not to secure, the title of the French Justinian. In this age the practical jurist came to give effect to practical codes: the labours of Brodeau and Lebrun largely lay behind the work of Pothier, while legal philosophy and speculation were kept alive by Grotius and Domat.

The most important legal event in the earlier years of Louis XV. (apart from the growing constitutional power of the Parlement de Paris) was the Edict of 1738, which formulated the procedure that governs even to-day the appellate jurisdiction of the Cour de Cassation. A right of appeal in error against the decision of a Parlement was recognised as early as 1302; *la proposition d'erreur* could from that date be brought against a decision of a Parlement. The principle was confirmed by a series of sixteenth-century ordinances; but the right of appeal was abolished by the procedure reforms of 1667, though the Crown reserved the right to declare all judgments contrary to its ordinances null. Thus the Crown (*le conseil privé* or *conseil du roi*) became the Court of Appeal by virtue of its inherent jurisdiction. The principle was enforced by d'Aguesseau in the *Règlement de Conseil* of June 28, 1738: an appeal to the Cour de Cassation was only to be allowed where there had been a plain breach of a precise law. It was frankly stated that the object of the appeal was rather to maintain the authority of the ordinances as against the Parlements than to further the cause of justice. The struggle with the Parlements was the notable fact of the last days of the *ancien régime*. They represented and kept alive through the centuries the constitutional idea. It was a function worthy of a juridical assembly; but we must remember that the establishment of an appellate jurisdiction emanating from the Crown in check of Parlement was likewise a constitutional development that also made for liberty and justice.

But if the constitutional idea was germinating rapidly during the reign of Louis XV., this period was fruitful in amendments of the civil law. In 1729 the rights of succession of a mother to property of her children under certain circumstances (which had been destroyed by the edict of Saint-Maur of 1567) were restored. The ordinance *sur les donations* of 1731 was a step

towards the unification of the written and the customary law at which the great French jurists from Dumoulin onward had aimed. D'Aguesseau felt acutely the necessity for uniformity of law, independent of places or persons. This doctrine is laid down with great precision in the preamble to the ordinance of 1736. The ordinance as to *donationis inter vivos* or *mortis causa* is a step in this direction. The new law laid down that all non-onerous donations were revoked by the birth of issue. D'Aguesseau next turned to the law of wills, with the difficult problem before him of reconciling the Roman and the customary law. His solution appeared in the ordinance of August 1735, dealing with the form of wills and the witnesses to wills, with the principle of heirships and its relation to the *locus* of the property affected. The nuncupative will (in the presence of seven witnesses) was preserved when sanctioned by custom. It became *le testament authentique* of the Code Napoléon. The principle of the institution of heirs was retained in the districts where it was in force. The Roman law (the *lex Falcidia* and the *S.C. Trebellianus*) was carefully applied to the modern case. Thus the old cleavage was still recognised between the countries of written and unwritten law; but the ordinance found, where possible, a common ground for the two systems of law, and prepared the way for codification. In 1747 came the ordinance as to the law of substitutions, which clearly laid down the limitations of that branch of Roman law in its relations to gifts *inter vivos* or by will. The last ordinance of great importance to the civil law under the *ancien régime* was issued in 1771, the year before the death of Pothier: the protection of mortgagees, who could be defrauded, since the sixteenth century, by the simple expedient of a sale of the land under an order of Court. Thenceforward the place of a decree of the Court was taken by a document issued by the *Conservateur des hypothèques* in each district. The letters (of ratification of sale) could only be issued after public notice had been given that the land was for sale. If the mortgagees did not come in and make their claim within two months after public notice, the purchaser acquired a good title free from incumbrances.

The reign of Louis XV. almost coincided with the working life of Pothier. We are now in a position to consider his work in the light of the legal system the intricacies of which have been barely indicated here. In the *Essai sur l'Histoire générale du Droit français*, by MM. Dalloz, Pothier is written of in the following fashion:

"Que dirons-nous de Pothier que ne sachent tous deux que s'intéressent à la Science du droit? Les traités seront toujours les meilleurs commentaires du Code, dont les rédacteurs lui ont tant emprunté. Par la clarté de son exposition, la lucidité de ses aperçus, la sûreté de sa doctrine, qui toutefois ne sonde pas au delà des profondeurs nécessaires pour établir les fondations d'une jurisprudence applicable et pratique plutôt que philosophique et élevée, par tout cela, Pothier est le jurisconsulte par excellence; mais il manque à ces qualités éminemment françaises celle de la vivacité du tour et de l'expression comme écrivain. Il est vieux par la manière, l'étant par l'esprit en dehors des matières du droit. Les grands juris-

consultes du xvi^e siècle étaient de leur temps. Dumoulin, Duaren, les Hotman, etc., étaient mêlés au mouvement politique et au mouvement religieux de leur époque. Ceux du xviii^e siècle semblent avoir vécu en claustration, au milieu d'une société dont l'état moral se transformait. Pothier était contemporain de Rousseau et de Voltaire, et, à la lecture de ses traités, nul ne le croirait. Mais le bon sens, la raison claire et simple, ne perd jamais son autorité; il est de tous les temps; et malgré ce qu'il est permis de penser sur ce que les livres de Pothier laissent à dévorer, ils ne vivront pas moins par l'autorité du bon sens, qui jamais ne faiblit chez lui."

We must now return to the life of Pothier, and trace out the order of the publication of his treatises, and the relation of his work to the legal systems described above. The work which underlay all else was his prolonged study of Roman law. For years he devoted his leisure to the problem of the order of the text of the Pandects, and in 1736 he communicated some essays on the subject to M. Prévôt de la Janès, who at once laid the work before the Chancellor D'Aguesseau. D'Aguesseau saw the great importance of Pothier's scheme of reconstruction of the text of the Pandects, and gave him every encouragement by letter, comparing his work to that of Vigellius. In September 1736, Pothier went to Paris and saw the Chancellor on the subject, and from time to time he sent to the Chancellor specimens of the work. In the second edition of Pothier's work (published in 1781) we have printed letters from the illustrious Chancellor to Pothier on the subject of this work written between 1736 and 1745. The work, the result of a quarter of a century of incessant labour, was published in 1748 under the title *Pandectæ Justinianæ in novum ordinem digestæ* (Paris: three volumes in-folio). It was a work that had become essential. The labours of many jurists had not cleared up the order of the text, and till that problem was solved Roman law could not come into its own. Pothier performed, wrote M. Dupin in 1825, what the sixty jurists appointed by Justinian failed to do for the laws of their own country. The need for such a work is trenchantly expressed by a modern French writer on Pothier:

"L'étude de cette science était hérissée d'obstacle presque insurmontable, à cause du désordre et de la confusion qui régnaient dans le *Digeste* justinien, où les fragments précieux des anciens jurisconsultes, les décisions, les textes, les extraits, les interprétations, les commentaires, tous les matériaux de l'édifice immense du droit romain étaient entassés pêle-mêle, sans liaison, sans suite, sans critique, sans méthode et dans un désordre rendu plus inextricable encore par les modifications postérieures et par les erreurs des copistes. Pothier entreprit de porter la lumière au milieu de ces ténèbres, de rétablir l'ordre au milieu de ce chaos, d'accomplir enfin l'œuvre devant laquelle avaient reculé les jurisconsultes les plus célèbres, que Cujas lui-même n'avait qu'incomplètement essayée et que le vaste génie du Chancelier de l'Hôpital avait rêvée. Pendant vingt ans, il interrogea les anciens, étudia les modernes, dévora tous les commentateurs, poursuivant l'accomplissement de son plan avec une persévérance plus forte que les obstacles et en terminant enfin l'exécution après des prodiges de travail, de sagacité et de scrupuleuse érudition."¹

¹ Art. *Pothier*, Larousse, *Grand Dictionnaire de XIX^e Siècle*, pp. 1517-18.

Pothier based his work on the current text of the Pandects and the Code, supplemented by the work of Cujas and Dumoulin. The great treatise opens with a Prolegomena dealing first with the sources of Roman law, with the *plebiscita* and the *senatus consulta*, with the Pretorian law, with the interpretation of the Roman jurists. A second part of the Prolegomena gives us an account of the great jurisconsults, whom he classifies as follows : (1) Those before the time of Cicero ; (2) the Ciceronian jurists to the age of Christ ; (3) the jurists from the Christian era to the age of Hadrian ; (4) from Hadrian to Gordianus (A.D. 117—240) ; (5) jurists of uncertain date. Ninety-two classical jurists are enumerated, with some account of the work of each. Some juridical writings immediately after the classical period are next mentioned. A note follows on the Roman schools of legal thought, Proculian and Sabinian. A third part discusses the labours of Justinian. The work then opens with a considerable treatise, giving and discussing the fragmentary text of the Twelve Tables, followed by the extant fragments of the Perpetual Edict, and then leads us up to the Digest or Pandects of Justinian. These 208 folio pages of introduction are a miracle of unassuming, unsuspected learning. Pothier, in dealing with the Digest, preserved the old arrangement of the titles, which was the order of the Perpetual Edict, but under these main headings—each title having a full introduction—the texts are arranged in methodical order, and the true place of every text is found. The labour of re-creating the correct order of the text was immense. It represented years of work by one of the fastest and most methodical workers who ever lived. It is impossible to turn to the five-volume edition, published in Paris in 1825, of this work without reflecting not only on the achievement itself and all that that achievement meant for subsequent workers in the field of Roman law, but also on the immense range of legal knowledge that the very production of such a work must have involved and reinforced. When Pothier finally issued his edition of the Pandects, his must have been the best-stored mind, in the matter of the principles of law, in the world. And we have to remember that Pothier was not working at Roman law as a sole subject : all the while he was pursuing the practice of the law of his own country, he was in contact with the finest jurists of his day, and was, in fact, working hard at the legal historical problems of his own country.¹

The conclusion of his work was marked by a complete breakdown in health, the result not only of fever, but of prolonged labours, from which recovery was only slowly achieved. In October 1649, his old friend and helper, M. de la Janès, died, and the Chancellor D'Aguesseau appointed Pothier to the vacant Professorship of French Law in the University of

¹ It should be noted that Pothier was assisted in the work by M. de Guienne, an *avocat du parlement*, who was responsible for the greater part of the preface, contributed to commentary on the law of the Twelve Tables, and revised, with critical exactitude, the entire work. Pothier was also a good deal influenced by Rousseau, the Professor of Law at Paris and his intimate friend.

Orleans. The other candidate for the post was M. Guyot, and each sought to yield the chair to the other; and Pothier was not satisfied till M. Guyot¹ was associated with him in the work. Pothier seems to have been an ideal teacher. M. le Trosne tells us:

“Il sçavoit tellement cacher la supériorité du maître, que les étudiants croyoient converser avec un ami. Les leçons étoient des conférences dans lesquelles il soutenoit l'attention par des interrogations qui mettoient les jeunes gens à portée de faire valoir leurs études particulières. La question s'adressoit à un seul, et tous s'empressoient d'en chercher la réponse, tous étoient en haleine, parce que la question suivante pouvoit s'adresser à eux. La réponse étoit-elle difficile? la tournure même de la question servoit à y conduire, et l'indignoit aux esprits attentifs, en leur laissant tout le plaisir de la recherche, et l'honneur de la solution. L'objection la moins solide, celle même qui annonçoit ou le peu d'avancement ou l'oubli du principe, étoit écoutée et répondue avec bonté.”

It is very interesting to note that Pothier, in the testing of his scholars, revived the medieval method of public disputations, a method that had only then recently died out in England, but which in France had long given place to the modern system of formal examinations. The method of disputation, in which the victor was awarded a gold medal, aroused every faculty in the students (for questions as well as answers were considered by the judges), and, as M. le Trosne says, “None would enter the lists if not assured, if not of victory, at least of honour.” Moreover, it created public interest in the University and in the law school of the University. Pothier took up this work from the sheer love of teaching. His emoluments he divided between the poor and his pupils during the five-and-twenty years that he held the professorship. Alongside of his professorial and his judicial work, Pothier, on the completion of his work on Roman law, turned with all the zest of a lover to that object of a true lawyer's passion—the law of his own country. For years he had prepared from time to time for his own use treatises or handbooks of French law. He needed such books in the daily round of his life. But now that the great foundation was laid, now that Roman law had yielded up to his capacious mind principles and equities, he turned to the law of his own land with the determination to do what had never yet been attempted. As long before as 1740 he had published conjointly with M. de la Janès an edition of the *Coutume d'Orléans*, and now, on a demand for a second edition, he produced a work of a singularly valuable kind; for at the head of each custom he added a little treatise on the subject of the custom, thus drafting schemes or designs for the series of treatises that he subsequently produced. This treatise completed, he turned to the work for which he is most famous—his famous *Traité des Obligations*, which he published in 1761 in two volumes, as the foundation of other projected treatises, and which was, in fact, the first fruit of his unique knowledge of Roman law. Of the classical treatise it will be necessary to give some summary, but before doing so it is

¹ Guyot edited Pothier's posthumous works in 1777.

desirable to refer to the series of works that sprang, so to speak, out of it. In 1762 he issued his *Traité du Contrat de Vente* and his *Traité des Retracts*. This was followed in 1763 by *Le Traité du Contrat de Constitution de Rente* and *Le Traité du Contrat de Change*; in 1764 by *Le Traité du Contrat de Louage* and *Le Traité du Contrat de Bail à Rente*. In 1765 Pothier supplemented his *Traité du Contrat de Louage* with a treatise on Maritime Hire, and chiefly charter parties and damage (*avaries*), and also issued his *Traité du Contrat de Société* and his *Traité des Cheptels* (the leasing of cattle). In 1766 and 1767 he published the treatises on the contracts of *Bienfaisance*—i.e., *Le Contrat de Donation*, *Du Prêt à Usage*, and *Du Précaire* (forming one treatise); *Du Prêt de Consomption* (a second treatise); *Du Dépôt* (a third treatise); *Du Mandat*, with the quasi-contract *Negotiorum Gestorum* (a fourth treatise). The same years saw the treatises *Du Contrat de Nantissement* (pledge), *Des Contrats Alléatoires* (eventual contracts), *Des Contrats d'Assurance*, *du Prêt à la grosse Aventure* (bottomry), *Du Jeu* (gaming contracts). In 1768 Pothier issued his *Traité du Contrat de Mariage*; in 1769 *Le Traité de la Communauté*. These two great treatises on the marriage contract and the law of property and marriage together come to about 800 folio pages—the work of a lifetime in itself. With these treatises Pothier concludes his labours on the law of obligations. He has, he tells us, reserved the good wine to the last.

“ Nous avons cru ne pouvoir mieux terminer notre *Traité des Obligations*, et des différens contrats et quasi-contrats d'où elles naissent, que par un *Traité du Contrat de Mariage*, ce contrat étant le plus excellent et le plus ancien de tous les contrats. Il est le plus excellent, à ne le considérer même que dans l'ordre civil, parce que c'est celui qui intéresse le plus la société civile. Il est le plus ancien, car c'est le premier contrat qui ait été fait entre les hommes. Aussitôt que Dieu eut formé Eve d'une des côtes d'Adam, et qu'il la lui eut présentée, nos deux premiers parens firent ensemble un *contrat de mariage*; Adam prit Eve pour son épouse, en lui disant: *Hoc nunc os ex ossibus meis, et caro de carne mea . . . et erunt duo in carne una*: et Eve prit réciproquement Adam pour son époux.”

This is indeed a characteristic passage, setting forth Pothier's profound respect for the institution that underlies all civilised society, coupled with his entirely reverend acceptance of the text of the Old Testament (for the Post-Royalists were not modernists in our limited textual sense), and his passion for detecting the binding operation of law even in the spontaneous utterances of love.

In 1770 he issued the treatises *Du Douaire* (dower), with its appendix *Du Droit d'Habitation* (the right of the widow to occupy the former marital residence for life or widowhood), *Des Donations entre Mari et Femme*, with an appendix discussing Article 68 of the Custom of Orleans, by which either spouse could leave to the other by a mutual gift, conformed by a mutual will, practically a complete interest in the other spouse's entire estate (subject to debts and maintenance of infants). The discussion is full of interest. These

essays complete the monumental treatises on marriage and the law of property arising out of marriage.

In 1771 and 1772 came the last treatises which reconsider the whole Law of Possession: *Le Traité du Droit de Domaine de Propriété*; *Le Traité de la Possession*; *Le Traité de la Prescription qui résulte la Possession*.

The *Traité du Droit de Domaine de Propriété* sets forth two kinds of rights, the *jus in re* and the *jus ad rem*, the first being the rights that we have in the thing itself, the second being the rights we have against the person who has contracted towards us the obligation to give us the thing. The *jus ad rem* is the subject of the law of obligations; the *jus in re* is the subject of the law of possession, and of feudal and censual rights, and rights of mortgage. Pothier proceeds to deal with the Law of Possession—and this, his last published work, should be compared with Savigny's first published work, which is so famous, dealing with the same theme. Possession, Pothier tells us, is one of the ways of acquiring dominion: a treatise of possession necessarily follows on a treatise as to dominion over property. Pothier deals first with the nature of possession, and then discusses the different kinds of possession, the things susceptible of possession, and of quasi-possession, the manner of acquiring (and of losing) possession, and finally the rights of action springing from possession. Possession itself is “la détention d’une chose corporelle que nous tenons en notre puissance, ou par nous-mêmes, ou par quelqu’un qui le tient pour nous et en notre nom.” It is a fact rather than a right, but it gives rise to rights in the things possessed—namely, a reputation as owner (*propriétaire*) till the true owner appears, and the right of action to obtain possession and recover possession. This is the case whether the title be just or unjust; but if the title be just and of good faith, dominion also follows after a lapse of time by virtue of prescription.

There are two kinds of possession, civil and natural—the former springing from a good title, the latter from no title, or a bad title, or a null title, or a good title that has not inherent in it any right of transfer. This doctrine should be compared with that of Savigny. It will be remembered that Savigny dwelt on the fact that modern law had extended the doctrine of possession from party and *jura in re* to every possible right, including rights of personal status and obligations. The comparison between the two works cannot be carried out here.

Pothier died on March 2, 1772, after a brief illness from fever. The brief summary given above of his works must suffice to supply some idea of his labours, but the four great volumes in which they are contained in no sense exhausts his legacy to the world of law. In 1777 his posthumous works were issued in three volumes, and these are further tribute to the enormous industry of the great jurist. The work was edited by M. Guyot, a well-known lawyer and jurist of Orleans. That an authorised edition was necessary, was shown that a clandestine or pirated and imperfect edition of *Traité des Fiefs* was issued at Orleans (apparently from a student's copy of the manuscript) before

the official edition appeared. There was a real demand for any works from the pen, to quote M. Guyot's prefatory letters to Monseigneur de Miromesnil (Garde des Sceaux de France), "d'un jurisconsulte qui a honoré notre province, autant par ses *Scrits* immortels, que par ses travaux assidus dans l'exercice des fonctions de la Magistrature et l'enseignement public du Droit."

The first volume contained the *Traité des Fiefs*, an elaborate treatise of great historical value, that gave the exact legal position as to ownership of land on the eve of the French Revolution. Pothier tells us that "Les biens immeubles se divisent, par rapport à la manière dont se font tenus, en féodaux, censuels, et allodiaux." He goes on to distinguish those classes of land with a clearness not to be found in the best modern French dictionary: "Les immeubles féodaux ou fiefs sont ceux qui sont tenus à la charge de la foi et hommage. Les censuels sont ceux qui sont tenus à la charge d'une redevance pécuniaire, en reconnaissance de la seigneurie du Seigneur de qui ils sont tenus. Les biens allodiaux ou franc-alleux sont ceux qui ne sont d'aucun Seigneur."

This work discusses fiefs. The *Traité des Cens*, which follows it, deals with a certain class of charges on land:

"Le contrat de bail à cens est un contrat par lequel le propriétaire d'un héritage ou d'un autre droit immobilier l'aliène, sous la réserve qu'il fait de la seigneurie directe, et d'une redevance annuelle en argent ou en fruits, qui doit lui être payée par le preneur ou ses successeurs en reconnaissance de ladite seigneurie. Cette redevance annuelle s'appelle *cens*. L'héritage chargé de cette redevance, à la charge de laquelle il a été concédé, est ce qu'on appelle un héritage *censuel*. Le possesseur de cet héritage s'appelle *censitaire*. Celui à qui est dû cette redevance récongnitive de la seigneurie directe qui est par-devers lui, est ce qu'on appelle le Seigneur de Censive."

The distinction between the *Cens* and the *Rente foncière* is carefully brought out; and here we see the cleavage between the old law and the new. The *Rente foncière* is never seigneurial, and is, therefore, subject to the law of prescription; while the *Cens* is subject to no such law. Indeed, the *Cens* really enabled the owners of free or lordless land to grasp a lordship, for when they granted the *Cens* they reserved the lordship. The next treatise deals with the feudal or seigneurial right or rent known as *Le Droit de Champart*. This is followed by *Le Traité de la Garde-noble et Bourgeoise*; *Le Traité du Préciput* (preferential legacy) *légal des Nobles* (relating to a special aspect of the law of property in marriage in the case of the noble class); *Le Traité de l'Hypothèque*; *Le Traité des Substitutions*, a derivative of the Roman law of wills. The second volume (which again warns the reader against imperfect pirate editions of works by Pothier, such as the 1774 edition of the *Procédure Civile*) opens with the lengthy *Traité des Successions*, and passes on to the *Traité des Propres* ("l'esprit de notre droit coutumier est que chacun conserve à sa famille les biens qui lui en sont venus. De là est venue la distinction entre les *Acquêts* et *Propres*"), *Traité des Donations testamentaires*,

Traité des Donations entre Vifs, Traité des Personnes et des Choses. This last work opens with an invaluable analysis of the classes that made up French society immediately before the Revolution. He summarises the privileges of the noblesse under eleven heads. The third head is the most notable : " Ils sont exempts de taille et de plusieurs autres cotisations, connues sous le nom de *Taillons, de Crués d'Aides, et de Subsidés*, auxquels les roturiers sont sujets ; ils ont même le droit de faire valoir quatre charrues, sans pouvoir y être imposés." In return they are destined for the military service, and have some small special burdens. When Pothier deals with serfs he is careful to point out that they are not slaves : a negro in France becomes free. The serfs of the Royal Provinces, such as Burgundy, have a civil status, are citizens : " Ils ne font pas in dominio du Seigneur auxquels ils appartiennent et ne sont appelés Serfs qu'à cause de certains devoirs très-onéreux, dont ils sont tenus envers lui." There were classes of serfs : the serf born, who must remain a serf ; the serf in respect of a heritage, who can become free by abandoning the heritage ; and *les serfs de meubles*, who can only achieve their freedom at the cost of all their personal estate. *Les serfs de corps* cannot escape from their burdens " tels que la taille que leur Seigneur a droit d'exiger, le droit qu'a leur Seigneur de recueillir après leur décès tous les biens qu'ils délaisseront." The *taille*, the *corvée*, the inability to marry out of the serf class, and the limitation on testamentary disposition, were certainly moving forces towards revolution. The last volume contains *Traité de la Procédure civile* and *Traité de la Procédure criminelle*, the value of which in tracing the history of French law can hardly be over-estimated. The brief sketch of the contents of these volumes give some slight idea of the vast volume of Pothier's work. It is desirable, however, to make some fuller reference to the famous *Traité des Obligations*, since that work is in one sense Pothier's chief contribution to the science of law in general—a work that stands out as something different in kind and scarcely less monumental than his presentation of the entire Corpus of French law as conceived and practised in his age. The work falls into four parts, as follows :

- I. *Première Partie* : De ce qui appartient à l'essence des obligations ; et de leur effet.
- II. *Seconde Partie* : Des différentes espèces d'obligations.
- III. *Troisième Partie* : Des manières dont s'éteignent les Obligations, et des différents fins de non-recevoir, ou prescriptions contre les créances.
- IV. *Quatrième Partie* : De la preuve tant des obligations que de leurs paiemens.

The work runs to 459 folio pages, and is, of course, of great elaboration.

Part I. falls into two chapters. In the first chapter Pothier discusses what belongs to the essence of obligations, and in the second chapter the effect of obligations. It is, he says, of the essence of an obligation

that there should be a cause from which the obligation springs ; that there should be persons between whom the obligation is contracted ; that there should be a thing that is the object of the obligation. The causes of obligations are contracts, quasi-contracts, delicts, and quasi-delicts, and sometimes the mere operation of law or equity. It is of profound interest to see Pothier fall back on Natural Law as the cause of obligations. He says : " 123. La Loi naturelle est la cause au moins médiate de toutes les obligations : car si les contrats, délits et quasi-délits produisent des obligations, c'est primitivement parce que la Loi naturelle ordonne que chacun traite ce qu'il a promis, et qu'il répare le tort qu'il a commis par sa faute." Pothier first deals with contracts : a contract is a pact or convention to form an engagement. He refuses to adopt the Roman basis of contracts : " n'étant pas fondés sur le droit naturel." He proceeds to define a contract as " une convention par laquelle les deux parties, réciproquement ou seulement l'une des deux, promettent et s'engagent envers l'autre à lui donner quelque chose, ou à faire ou à ne pas faire quelque chose." The parties must promise *and* engage : for a promise may be merely " une obligation imparfaite " (a famous phrase). This is not the place in which to contrast the various views as to the nature of contract held by various famous jurists, but it is perhaps worth noticing that both Savigny and Austin (with his distinction between a contract and a solicitation taken apparently direct from Pothier) owe much to Pothier's analysis. The English doctrine of Consideration is no doubt implied in Pothier's definition, for in the absence of what we should call consideration, Pothier would find that the obligation was imperfect, and that therefore there was no contract. But in English law as late as 1765 (see Anson on *Contract*, twelfth edition, p. 90 ; *Pillams v. Van Microf*, 3 Bover 1663) the doctrine of consideration was in the balance, and it was not until 1778, after Pothier's death, that in the case of *Rann v. Hughes* (7 T.R. 350 [n]) it was finally laid down that an agreement without sufficient consideration was *nudum pactum*. Without this specific doctrine Pothier apparently drew from the law of Nature a doctrine of contract that rejects as non-contractual agreements that in fact do not exhibit what English lawyers call consideration. But Pothier says that each contract must be considered by itself in order to determine the elements that are the essence of the contract. Pothier next passes to the other causes of obligation, to the persons between whom obligations can arise, to the things that can be the object and subject-matter of obligations. Lastly, in this first part, he discusses the effects of obligations.

In the Second Part he opens with an analysis of the different classes of obligations, and in the second chapter distinguishes between *obligations civiles* and *obligations naturelles*. He says that French law, refusing to follow Roman law in its distinction between contracts and simple pacts, " ces obligations naturelles du Droit romain sont dans notre Droit de véritables obligations civiles." But these simple pacts, which are unenforceable because the law denies the right of action, or one of the parties incapable of con-

tracting, must not be confounded with the "imperfect obligations" which he has already excluded from the realm of true obligations—obligations which create no manner of right. In other words, if the consideration exists, the obligation exists, even if for some technical reason the obligation cannot be enforced in the courts. In the next chapter Pothier discusses the different ways in which obligations can be contracted. In the fourth chapter he considers particular kinds of obligations with reference to the subject-matter of the obligation. In the fifth chapter he discusses penal obligations; in the sixth accessory obligations, such as the obligation of a guarantor.

The Third Part discusses the extinction of obligations (and the running of prescription against debt) in eight important chapters. A creditor must bring his action within thirty years. This doctrine, he says, springs from the presumption that the debt would be paid within that time, and also to relieve debtors from the duty of keeping receipts for ever. The prescriptive period in some customs (cf. Orleans) in the case of a debtor bound by notarial act was (following the Roman law) forty years. On the other hand, small shop-keepers had to demand payment of their accounts within six months, and merchants within a year; but these rules did not apply where the debt could be proved by evidence in writing. The last part deals with the question of the proof of the existence of obligation. The creditor has to prove the debt, and then it lies on the debtor to prove, if he can, that it is already discharged. There are, Pothier says, two kinds of proof: literal proof, arising from acts or written words; and proof arising from evidence. The place of admissions, presumptions, and oaths in the realm of proof are also considered at length.

To those who are interested in the personality of Pothier we may recommend a perusal of the general observations that conclude this great work. He uses this chapter very largely for the purpose of discussing the views of a certain M. Le Brun (Avocat au Parlement de Paris) as to acts of default in relation to contracts. Pothier adopted the views of all the interpreters of Roman law and the jurists up to his time—the views of Accurse, Aluax, Cujas, Duaren, d'Avèzan, Vinnius, Heineccius—that there are three degrees of default: *lata culpa* (namely, not applying to the affairs of others the degree of care that the most careless and stupid person would devote to his own affairs); *levis culpa* (not using the care which an ordinary man would devote to his own affairs); and *levissima culpa* (not using the care which the most attentive person would devote to his own affairs). Pothier proceeds to ascertain the principles that determine when one or other of these degrees of carefulness is necessary. The first only is necessary (save in certain cases) if the debt is solely for the benefit of the creditor; where the interests of the parties to the contract or quasi-contract are reciprocal, the second class of carefulness is necessary; the third class is necessary in contracts when the act done is for the sole benefit of the party recovering the thing which is the object of the contract—as in the contract of commodatum. M. Le Brun

roundly denied the doctrine of three degrees of carefulness. There are only two kinds of diligence : the diligence which a man of business is accustomed to show ; the diligence that a man usually shows in his own affairs. It depends on the contract which kind of diligence is necessary. Pothier quietly joins issue with M. Le Brun (" Je suis demeuré attaché à l'ancienne doctrine "), and is full of apologies for disagreeing with his junior, and ends up with this charming sentence : " Au reste, quoique l'auteur n'ait pu me persuader d'embrasser son système, ce qu'il doit pardonner à un vieillard à qui il n'est pas facile de se départir de ses anciennes idées, je dois cette justice à sa dissertation, qu'elle est très inférieure et très savante, et qu'elle mérite d'être lue par tous ceux qui ont quelque goût pour la jurisprudence."

Space is not available here for dealing in any way with the sources of treatises on special contracts that supplement the treatise on obligations or the vast treatise on the contract of marriage. This essay has a peculiar value, as it deals at length with the question of marriage and divorce in the age when the new law was becoming effective. Pothier points out that no divorce can take place in France, but he adds that " dans les états protestants, le divorce est encore permis pour de certaines causes, et en observant certaines formalités," and refers the reader to the Code of Frederick of Prussia. The treatise gives us a further picture of social life in France in the mid-eighteenth century, laying bare as it does, with the pen of a practical lawyer, the whole of the marital régime that was reflected in every detail in the elaborate law governing the contract of marriage and the question of property rights springing out of that contract or out of the preliminary contract of betrothal.

One word of summary. In Pothier we see a lawyer who saw that there were three aspects of law that must enter the legal mind : the great bases which he found in Roman law partly, but also largely in the Law of Nature ; the great realm of practice ; the great and varying systems of customary law. He laboured like a Titan to bring together into one perfect whole these aspects of law, and performed a task of inconceivable labour and difficulty when he produced what was practically a code of French substantive and procedural law. No one but a great thinker and great jurist and a great practical lawyer could have done this : and he was all these things. But he was something more than this : he was a great man in whom character shone forth not only in his work, but in his life. He saw that the law which must govern society must also govern the individual, and he found, as Milton found, that the inner law of spiritual liberty was the necessary supplement of the outer law that governs the interaction of men and nations.

REVIEW OF LEGISLATION, 1911.

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REVIEW OF LEGISLATION, 1911.

INTRODUCTION.

[*Contributed by* SIR COURTENAY ILBERT, G.C.B., K.C.S.I., C.I.E.]

IN dealing with the vast and heterogeneous mass of legislation produced by the year 1911 it must suffice to glance rapidly at a few of the most interesting features of that legislation.

The English parliamentary session will be remembered chiefly for two great Acts, the Parliament Act and the Insurance Act. The Parliament Act, after a long and fierce constitutional struggle, restricted the legislative powers of the House of Lords, and amended the Septennial Act by limiting to a term of five years the maximum duration of a Parliament, but has not yet been brought into actual operation. The question now is whether the present Parliament will survive to complete the three successive sessions required for enabling the Parliament Act to accomplish its effects. The Insurance Act was received with general acclamation on its introduction, but encountered dogged opposition in the later stages of its passage through Parliament, and serious administrative difficulties after it had become law. It has now been in full operation since January 15 last. A comparison of its provisions with those of the German law by which it was suggested has been drawn by Dr. Schuster in an earlier number of this Journal.

But the session was very fertile of legislation, and produced other measures of great importance. The Acts for the protection of animals, the Coal Mines Acts, and the Lunacy Acts were consolidated. The Copyright Acts, after a series of unsuccessful attempts which have extended over more than one generation, were also reduced to an intelligible form by a process of simplification and consolidation, with amendments of which perhaps the most important was the extension of the term of copyright to a life and fifty years, subject to certain exceptions. The Perjury Act compressed into nineteen sections enactments which had previously to be searched for in no fewer than 260 different Acts, and will, it may be hoped, supply a model for further simplifications of the criminal law. A Forgery Bill, framed on similar lines, is now before the House of Lords. A Telephone Transfer Act authorised the gigantic financial operation of transferring to the State the property and powers of private telephone companies. The Shops Act,

which aimed at the beneficent object of securing to shop assistants a regular half-holiday in every week, is still giving local authorities a good deal of trouble in its administration.

A Small Landholders Act extended the provisions of the Crofters Acts to the whole of Scotland, and was designed for the protection of small landholders and the better distribution of land in that country.

In British India the Governor-General's legislative council passed a permanent Act for dealing with seditious meetings, provided for the regulation and control of criminal tribes, enacted a comprehensive Factory Act with a limitation of the hours of labour, and anticipated English legislation by passing a law for the regulation of aircraft.

Hongkong established a University, and was compelled to adopt temporary measures for meeting disturbances arising out of the Chinese revolution. It also made an interesting attempt to adapt the English law of partnership to Chinese commercial customs.

The efforts of Australian legislatures to cope with constitutional, economic, and industrial problems are always worth careful study. In 1911 the Commonwealth Parliament made important alterations in its great Conciliation and Arbitration Act, especially by amending the definitions of "industry" and "industrial disputes." The Arbitration (Public Service) Act provided for submission to the Arbitration Court of disputes between the Government and their employees, and may possibly supply hints for legislation on similar lines in this country. The Commonwealth Electoral Act provided for a system of compulsory enrolment of electors, abolished the privilege of postal voting conferred by a previous Act, and in its place substituted an extended system of absent voting. It also provided for the filing of returns of expenses by political organisations and newspaper proprietors, and for the signature of electoral articles, reports, and so forth in newspapers and other publications. The Defence Act was amended by reducing the number of hours of training required for senior cadets, and providing for the case of cadets who live at a distance from the place of training. A new Naval Defence Act deals mainly with the co-operation of the different Dominion forces and with the constitution of courts-martial. We are much indebted to Mr. Garran, a very high authority on Australian constitutional questions, for his careful account of these measures.

The legislation of the different States which compose the Commonwealth must not be overlooked. New South Wales made provision for absent voters, and also amended the income-tax laws. The tax is graduated according to income, and income derived from property pays more. The limit of exemption is raised from £200 to £300, and there are reductions for each child maintained by its parents.

In South Australia the Legislative Council raised a question of tacking on an Appropriation Bill sent up by the House of Assembly. A deadlock ensued. Then came a forced dissolution, a general election with results

adverse to the Ministry, and a change of government. The legislature set up an Aboriginal Department for the protection and control of aborigines and half-castes. It admitted women to the Bar, and it condescended to smaller matters; boots professing to be of leather must have solid leather soles, unless the soles are conspicuously marked to the contrary.

Victoria introduced a system of preferential voting, and passed an important law regulating matters connected with the land settlement of the State.

Queensland set up a State Children Department, charged with the care of State children, who include those sent to industrial and reformatory schools in this country, but are comprehensively defined. It also amended its law relating to agricultural banks, and imposed restrictions on the leasing of land to aliens.

The quantity of legislation required for Papua would at first sight cause surprise, but on examination it proves to consist mainly of useful consolidating measures.

New Zealand passed a Mental Defectives Act, and granted pensions to indigent widows with children dependent on them.

Fiji put a tax on huts and buildings, and imposed a subsidy and inspection tax on exported bananas.

South African legislation does not call for much comment. The Orange Free State Education Act raised the difficult language question.

Murder societies still appeared to be giving trouble to the legislature in Sierra Leone.

The Canadian legislation of the year, like that of South Africa, is mainly of local interest. Ontario made provision for the education of adolescents, *i.e.* young persons between 14 and 17.

Dr. Schuster, in his notes on German legislation, directs attention to some important statutes. One of these embodies a constitution for the Imperial province of Alsace-Lorraine, and regulates elections to the lower chamber of that province. Another introduces an Imperial increment duty on land, with provisions differing from, and deserving careful comparison with, those of the English law. A third regulates the conditions of work of "home-workers."

A Norwegian correspondent has sent some useful notes on Scandinavian legislation. Norway, where the power supplied by waterfalls has become an asset of great commercial value, passed a law for the regulation of its use. Sweden has adopted the principle of proportional representation.

The Review also contains some notes on recent Russian legislation.

Mr. Newton Crane reminds us that in most of the United States of America the State legislature only meets biennially, that of Alabama only once in four years. The session is in most States limited to sixty days, in Alabama to fifty days. Legislators are paid for their services by the day, and their pay ceases when the session ends. Nineteen hundred and eleven was one of the "odd" years, in which most sessions are held; but the legislation, though extensive, was mostly of local interest. The commission system of municipal

government appears to be growing in popularity. Under this system towns elect a limited number of commissioners, and invest them with absolute authority in all municipal matters, thus giving them the power to enact and execute laws, to appoint and remove officials, and to conduct in a businesslike way the affairs of the communities in their charge. There were not so many Acts as usual to enforce temperance by legislation, but Mr. Crane assigns as a reason for this that most of the prohibitive laws seem to be working fairly well and to have the support of those communities where they prevail. New Jersey established farms for the detention and correction of tramps and vagabonds. Several States imposed restrictions on the hours of labour for females and children. Six States dealt by legislation with the "White Slave Traffic."

FOREIGN.

I. EGYPT.

[*Contributed by W. E. BRUNYATE, ESQ., C.M.G., Khedivial Counsellor.*]

Laws of general public interest—22.

Azhar.—Law No. 10 represents the latest attempt to reorganise the system of Mohammedan religious education which has as its centre the ancient university of El-Azhar. The Sheikh of the Mosque of El-Azhar is entrusted with a general supervision of religious education. With him is associated a Superior Council composed of the Sheikhs of the four orthodox rites and the Director General of Wakfs, together with three persons from outside the University to be appointed by the Khedive in pursuance of a decision of the Council of Ministers. Managing committees, upon which also outside influences are represented, are created for the Azhar and for the Alexandria and Tantah colleges. The age of admission of students (10 to 17 years), courses of study, the appointment of staff, the discipline and leave of students and teachers and other like matters are regulated in a minute detail that is scarcely in accordance with Western ideas of elasticity in administration. A definite attempt is made to modernise the programme of studies in reasonable measure. The fifteen years' programme of studies is divided into three parts—primary, secondary, and advanced: the last mentioned entitling, after examination, to the diploma of Alim. The diploma of Alim qualifies for the post of Cadi, for the teaching staff, and for admission to the Mehkemeh Bar. The creation of an "Areopagus of Grand Alims," thirty in number, membership of which is in general incompatible with other employment, is directed especially to the advancement of learning. A fund is created for providing rewards, from £E10 to £E100 in value, for the writing of books on orthodox lines suitable for use in the University.

The acceptance of the Law by the University is doubtless due in part to the pressure of the Cadis' School (instituted in 1907), which is now incorporated for all purposes in the University, the control hitherto exercised by the Ministry of Education being replaced by that of the Superior Council of the University. It will scarcely be possible to judge of the effects of the new Law until a teaching staff is available that has been trained under the new

conditions : complete success would imply something like a revolution in the methods hitherto followed.

Civil Procedure.—In 1910 three Chambers of the Native Court of Appeal arrived at conflicting decisions on the interpretation of an unintelligible Decree of 1895 as to time for appealing and for entering appeals on the cause-list, with the result that no possible form of appeal would be held valid before all three Chambers. This is remedied by Law No. 4. So soon as it was announced that the matter would be dealt with by legislation the Court let it be understood that any case in which the point was taken by the respondent would be adjourned until the new Law came into force.

Education.—Law No. 9 deals with the organisation of the Police School. As it was repealed and replaced in 1912, any analysis of its provisions would be superfluous. Law No. 13 deals with examinations in secondary schools : its provisions are such as would ordinarily find a place in an Education Code.

Finance.—Law No. 22 is the annual Budget.

Khedivial Library.—Law No. 8 creates a Superior Council of eight members for the Khedivial Library and defines its powers. Its consent would appear to be necessary to every individual purchase of books, coins, etc. : while some of the clauses declaratory of its powers would appear to be intended to define or limit the objects of the Library.

Local Government.—Laws Nos. 1, 6, 7, 18, 19, 21 institute Mixed Municipalities of the usual type in the towns of Port Said, Minia, Mit-Ghamr, Kafr-el-Zayat, Zifta, and Helwan respectively. Law No. 2 reduces the property qualification for membership of the Provincial Council from £E50 annual land tax to £E5 in the Markaz of Aswan and abolishes it in the Markaz of El-Derr. The two Markazes in question are the southernmost Markazes in Egypt, and the cultivable land is both small in quantity and poor in quality.

Lotteries.—Law No. 12, amending the Lotteries Law of 1905, allows premises used for carrying on unauthorised lotteries to be closed by the order of the Court. When so closed, they cannot be reopened, for a period of three months, without the consent of the police.

Meglis Hasbys.—Law No. 5, creating a Superior Meglis Hasby, or Court of Wards, was the result of much criticism of the working of the Meglis Hasbys, from which, except in questions of interdiction and of the continuance of guardianship beyond the age of majority, there had theretofore been no appeal. The Superior Meglis Hasby consists of three native judges of the Native Court of Appeal, together with one Cadi of the Supreme Mehkemeh and one other public servant or retired public servant. It takes over the appeal jurisdiction of the Court of Appeal in the cases of interdiction, etc., already alluded to ; and, by way of innovation, any decision of a Meglis Hasby may be referred to it within three months of its date by the Minister of Justice, either on the complaint of the parties, or that of the Public Prosecutor's Department, or of his own motion. In all cases of which it is seised the

Court has the fullest powers of revision ; but it is understood that hitherto its tendency has been to content itself with quashing unsatisfactory decisions and referring the cases back to the inferior Court.

Mixed Tribunals.—Law No. 16 provides that the Vice-Presidents of the Mixed Tribunals of first instance, hitherto elected by the Tribunals themselves, shall be elected by the Court of Appeal from alphabetical lists of five candidates (three for Mansura) submitted by the Tribunals.

Law No. 17, modifying Art. 12 of the Mixed Civil Code, renders possible the amendment of the Mixed Codes and of laws complementary thereto without it being necessary to obtain, as theretofore, the unanimous consent of the Treaty Powers, provided that such legislation is not in conflict with the Organic Law of the Mixed Tribunals. Such legislation is to be initiated by the Ministry of Justice and must be approved by a two-thirds vote of a body composed of the members of the Mixed Court of Appeal together with the senior judge of each of the Treaty Powers not for the time being represented in the Court. Draft laws so approved may be promulgated at any time not being less than three months nor more than six from the date of approval, unless within the first named period one or more of the Treaty Powers shall have required their reference back to the legislative body. In case of reference back, if the necessary two-thirds majority is obtained for the laws, with or without amendment, they may be promulgated without further formalities. No provision is made for the communication of draft laws, whether before or after approval, either to the Treaty Powers or to the public. Besides permitting of the amendment of the Codes, the new Law should make it possible to apply to foreigners a good deal of semi-administrative legislation such as has hitherto been inapplicable to them by reason of its being technically in conflict with the provisions of the Civil Code as to rights of property, etc.

Public Health.—Law No. 3 empowers the Department of Public Health to close markets in neighbourhoods in which cases of plague or cholera have occurred or are suspected of having occurred. Law No. 14 revises and strengthens the law as to public latrines and conveniences for ablution, more particularly as regards those attached to mosques. Law No. 20 provides for the granting of a diploma for assistant pharmacists, and defines the respects in which pharmacists may be replaced or assisted by assistant pharmacists and by apprentices.

Public Works Ministry.—Law No. 11 suppresses the second Under Secretaryship of the Public Works Ministry, created in 1907.

Sinai.—The Sinai Peninsula has always been outside the ordinary administrative and judicial organisation of the country, being administered on undefined lines by the Ministry of War. When, a few years ago, the peninsula was, for political reasons, placed under a British commandant, practical questions began to arise as to the powers of that officer and as to his relations with the tribes. Law No. 15 puts an end to these difficulties by providing for

an organisation (under the Ministry of War) of a type not unfamiliar in similar districts in India. Power is taken to create officers engaged in administration judicial officers. Three grades of Court are created—summary Courts, composed of a single judicial officer with two assessors; special Courts, composed of the Governor or of a judicial officer delegated by him, with three assessors; and a Supreme Court composed of the Governor with two judicial officers and five assessors. The assessors' opinions are to be entered on the record, but are not in general binding on the judicial officer or officers with whom they sit. In criminal matters, the Penal Code is applied, with a special latitude as to penalty, and with a wide power of allowing offences to be compounded according to local usage as declared by a majority of the assessors. The Governor and Minister of War have wide powers of revision: all penalties restrictive of liberty of two years and upwards require to be approved by the latter. Criminal procedure is to be prescribed by the Ministers of War and Justice. In civil cases, equity and natural justice are to be applied, account being taken of local custom so far as not contrary thereto. A power is given to the Minister of Justice to remove cases to be tried in Egypt proper; and whenever any of the parties is not an inhabitant of the peninsula he may require that his petition to that effect shall be forwarded to the Minister of Justice and the case suspended pending his decision. The Minister of War is empowered, with the approval of the Council of Ministers, to issue police regulations, with penalties up to one month or £E5.

2. FRANCE.

[Contributed by M. RENÉ A. FAUX, *Avocat, Paris.*]

Law of February 26, 1911, modifying Art. 2272 C.C., and substituting the two years' prescription for the one-year prescription with regard to traders.

Undoubtedly the one-year prescription was too short a one, for this reason, that by requiring too early and too strongly the payment of their invoices, traders ran the risk of displeasing their clients, and losing them. Of course, it is wise to protect the buyer against the vexatious proceedings of the trader, but it is also quite right that this latter should have the possibility of securing his rights under reasonable conditions without placing him in the difficult position, should he want to be within the limits of the law, of displeasing his clients. This possibility exists with the new delay of two years. The trader who, during the year following the sale and delivery of the goods, had not done what was necessary to protect his interests, could only blame himself.

Text of the law: s. 2 of Art. 2272 Civil Code is annulled; s. 6 is completed as follows: "The claim of traders for goods sold by them to customers not occupied in trade is barred after two years."

Law of March 9, 1911, approving the Convention signed at Tokio,

September 14, 1909, between France and Japan for the mutual protection, in China, of trade marks, patents, designs, and copyrights.

The object of the Convention of September 14, 1909, was to enable the consular jurisdiction, both French and Japanese, in China, to apply, in disputes arising in that country between French and Japanese subjects with reference to industrial and intellectual property, the regulations which may be invoked by Frenchmen in Japan, and by Japanese in France.

This Convention will, in future, enable French authors and manufacturers, who may have to complain of infringements of their patents, etc., punishable under Japanese law, and executed in China by Japanese subjects, to apply for condemnation of those guilty parties by the Japanese consular tribunals. Reciprocity is likewise granted to Japanese subjects.

Law of April 8, 1911, modifying Art. 1953 Civil Code, which concerns the responsibility of innkeepers for the property of travellers.

S. 2 of Art. 1953 Civil Code is modified as follows :

"This responsibility is limited to 1,000 francs for cash, bonds, securities, jewels, and articles of value of any description, which have not been deposited with the innkeeper or hotel-keeper."

According to Art. 1952 C.C., the hotel-keepers were responsible as depositories of the belongings of the travellers who stop at their place. The deposit of these belongings is looked at as a "*dépôt nécessaire*."

With a view to diminishing the rigour of these regulations the Law of April 18, 1889, had added to Art. 1953 a second paragraph reading as follows :

"This responsibility is limited to 1,000 francs for cash, securities, or bonds to bearer of every description not deposited with the innkeeper or the hotel-keeper."

But this law left without limitation the responsibility attaching to other objects belonging to the traveller, such as jewels and articles of value.

The present law further restricts this responsibility. Not only it limits to 1,000 francs such responsibility for cash and securities, but also for bonds (without making any distinction between nominative and bearer bonds), and for jewels and articles of value of every description.

The law of 1889 did not sufficiently protect the innkeeper and hotel-keeper :

- (a) against the traveller *mala fide*, who does not hesitate to make a false oath ;
- (b) against the traveller *bona fide*, who believes he has been robbed in the hotel, when, on the contrary, he has lost his things himself, or when he has been robbed outside the hotel ;
- (c) against the negligence of travellers, which the hotel-keeper cannot prevent. His responsibility was therefore excessive, because in spite of any notices he might place in the rooms warning travellers he was nevertheless responsible.

The new law is more equitable with regard to the hotel-keepers,

Law of December 22, 1911, regarding the application of the International Convention of Berne on night work of women employed in manufactures.

On September 26, 1906, a Convention was signed at Berne by the representatives of most of the European Powers, the object of which was to prohibit night work by women in manufactures. This Convention was approved in France by the Law of July 15, 1908, and promulgated by a decree of September 13, 1910.

The present Law applies to the work of children, girls, and women in the industrial works the necessary modifications to place French legislation in concordance with the stipulations of the above-mentioned Convention.

The old Art. 4 is entirely annulled by this new text :

S. 1. The wording "children of under eighteen years, girls under age," is replaced by these words : "Young working men, and young working girls up to eighteen, cannot be employed at any night work in the establishments mentioned in Art. 1."

S. 2. The night's rest of young working girls up to eighteen, and of women, shall have a minimum duration of eleven consecutive hours, except as provided for by s. 4 of Art. 4 and Art. 7.

This was already the common practice.

S. 3. The right to employ children of male sex during the night (*i.e.* before five in the morning, and after nine in the evening) when there are two teams is limited to the underground work of mines, "minières," and quarries.

S. 4. Overtime for women above the age of eighteen, in certain industries, is no longer subject to the authorisation of the Inspector of Work, but to a mere notice given by the employer. This overtime cannot last beyond ten p.m., instead of eleven p.m. as formerly.

S. 5. The permanent exceptions to the regulations which forbade night work of women and children are suppressed ; there cannot be from now on anything but temporary exceptions : they are subject to mere notice.

S. 6. The special exceptions in case of stoppage of work ("chomage") resulting from accidental or unavoidable interruption are also subject to notice instead of the Inspector's authorisation ; but the number of night-work hours cannot exceed the number of stoppage hours ; and beyond a limit of fifteen nights per year the employer is obliged to apply for the authorisation of the Inspector.

These new regulations came into operation on January 17, 1912.

Law of December 30, 1911, regarding crossed cheques.

This Law adds to the Law of June 14, 1865, concerning cheques, already completed by Art. 5 of the Law of February 19, 1874, further regulations, with a view to popularise and to regulate the use of crossed cheques in France.

Ever since 1874 the use of crossed cheques is regulated in England, and it has given the British trade a valuable instrument, which has contributed considerably to the commercial prosperity of England.

The great advantage of crossed cheques consists in the security they give for the payment of cash, and in the simplification of the operations necessary for traders at the time of collection to effect and receive their payments.

It is of no use to explain the advantages of crossed cheques to English readers, who have long been familiar with them. Let us only congratulate ourselves on the adoption of a means of payment which has long since proved its efficacy on the other side of the Channel.

3. GERMANY.

[Contributed by ERNEST J. SCHUSTER, ESQ., LL.D.]

Statutes relating to the Constitution of Alsace-Lorraine and to the Elections for the Lower Chamber of Alsace-Lorraine.—These statutes embody the Constitution of the Imperial Province of Alsace-Lorraine, which by virtue thereof has become an autonomous State under the sovereignty of the Emperor, and represented by three votes in the Federal Council. The Emperor is represented by a Governor, to whom some of the functions of the Sovereign may be delegated. The statutes affecting the province require the Emperor's approval as well as the assent of the Upper and Lower Chamber; the statute embodying the budget must be introduced in the Lower Chamber, the Upper Chamber being authorised to reject it *in toto*, but having no power to introduce amendments. The Upper Chamber consists (1) of four ecclesiastical dignitaries and one judicial dignitary; (2) of representatives appointed respectively (*a*) by the University of Strasburg; (*b*) by the Jewish Consistorial Boards; (*c*) by the Town Councils of the four principal cities; (*d*) by the four principal Chambers of Commerce; (*e*) by the Agricultural Council; (3) of members nominated by the Federal Council and appointed by the Emperor, the number of which must not exceed the aggregate number of the other members of the Chamber. The Lower Chamber consists of sixty members, apportioned to the twenty-three districts of the province and elected by universal male suffrage, every male person of German nationality who has completed his twenty-fifth year and been domiciled in the province for not less than three years being entitled to vote.

Statute relating to Increment Duty.—This statute introduces an Imperial increment duty on land. The duty is payable on the occasion of any transfer on sale or exchange of land (an exception being made in favour of small parcels). The rate of duty is progressive, the minimum rate being 10 per cent. and the maximum rate 30 per cent. The character of the duty is different in several important respects from that of the corresponding British duty. The differences are the following: (1) No account is taken under German law of the site value. The increment value is the difference between the value of the parcel at the time of its acquisition and the price

at which it is sold (allowance being made for the amount spent on improvements with certain prescribed additions and for certain other items). (2) No duty is payable under German law in the case of transmission on death. (3) No periodical duty is payable under German law by corporate bodies owning land, and certain classes of association holding land for charitable purposes or other purposes of public interest are freed from payment of duty even in the case of a profitable resale. The proceeds of the duty are apportioned in the following manner: 50 per cent. go to the Imperial Exchequer, 40 per cent. go to the local authority in the district of which the parcel subject to duty is situate, and the remaining 10 per cent. go to the State Exchequer.

Statute consolidating the law as to Workmen's Insurance and Statute relating to the Insurance of Higher Grade Employees.—These statutes will be dealt with separately in a future number.

Statute relating to Homework.—This statute regulates the work in workshops in which all persons employed are either (a) members of the same family, or are (b) outworkers not being under the control of any employer. The persons coming within this description are called "homeworkers." The expression "workshop," as used in the statute, includes rooms used as bedrooms, living rooms, or kitchens in which manual labour is exercised by way of trade, and also places in the open air. In every workshop in which homeworkers are employed tariffs of wages must be exhibited, and wage-books or work-slips must be handed to the workers showing the nature of work done and the wages paid in respect thereof. Special regulations are made for protecting the health and morality of the workers, and also for protecting the public against any injury to health which might arise from the consumption of articles of food produced or packed in workshops in which homeworkers are employed. The Federal Council has power to appoint local committees for the several trades employing homeworkers, who have to superintend the carrying out of the provisions of the statute and otherwise to advise and protect the persons under their charge.

Statute for ensuring the Working of Patents.—This statute was passed by way of reply to s. 27 of the British Patents and Designs Act, 1907. It provides as follows:

(1) When a patentee refuses to grant a licence on reasonable terms, and the granting of a licence appears desirable in the public interest, the Patent Office may grant the licence either unconditionally or subject to such conditions as it may think fit.

(2) Subject to international treaties to the contrary, the patent may be revoked if it is worked exclusively or principally outside of the German Empire and the German Protectorates.

The grant of a compulsory licence or the order revoking the patent cannot be made before the expiration of a period of three years reckoned from the date of the publication of the grant of the patent.

4. NORWAY AND SWEDEN.

[Contributed by P. D. WÆRNER, ESQ., of Christiania.]

(i) NORWAY.

The principal laws passed by the Norwegian Storting in 1911 and 1912 are: The Tax Law of August 18, 1911, with alterations of June 28, 1912; and the Regulation Law (part of the Concession Laws) for rivers and lakes in connection with waterfalls.¹ These laws are important, having being based on quite new principles, and may therefore be of special interest to the Society of Comparative Legislation.

The Tax Law.—While the old Tax Law of April 15, 1882, ordained that a Committee—the Tax Committee—consisting of people of all classes and grades chosen among the taxpaying members of the community had to decide, according to their knowledge of different people or their best idea, the amount of income and property, if any, on which every citizen had to pay a certain percentage of taxes and rates (the “State tax” to be paid to the Government, the income tax to be paid to the municipality), the new Tax Law says that every citizen with an income of more than about £100 (in the cities; in the country the limit is lower) has to send in *his own statement* as to income and property. The taxpayers receive a detailed sheet, which has to be returned duly filled in. The people with the bigger incomes pay more taxes in the proper proportion than those with smaller incomes—although under the old system the taxpayer had the right to claim to have his taxes reduced on his proving that his income or property was not as large as the Tax Committee’s estimate.

If anybody omits to send in such statement of income and property (if any), such omission cannot be punished directly, but the municipal officials will then put him down at a certain income according to their own estimate—and this is not likely be too small. The taxpayer in such a case has no right to complain of this estimate or demand that his taxes be reduced. If any taxpayer sends in a false statement, this is a punishable offence. All firms and trading companies which have a duty to keep books must, in any case, irrespective of their incomes being below the £100 limit, send in their statements.

The Tax Law for the cities differs slightly from the law for the country; in the country the said limit is about £35. This figure may, however, be raised or still lowered later on.

Not only what the law calls “physical persons” are obliged to state their income, but also limited companies—private and public—and all other institutions under separate direction. Persons and companies abroad will also be taxed when they are trading or have property or income in

¹ See Journal, N.S. vol. xi. p. 331.

Norway. The representatives of such foreign persons or companies in Norway are responsible for the payment of the taxes.

If husband and wife have "exclusive possession," the husband has to pay the taxes of the income and property of both, unless the wife demands to pay it herself according to a separate statement.

With reference to the taxes to be paid by shipping companies, by fishing companies and salvage companies, such taxes are to be paid by the shareholders direct themselves, they have to state their capital invested in such companies and the interest or profit obtained from such shares. If the shareholders reside abroad, they are taxed at the place where the shipping company has its office, and the company is so far responsible for the payment of such taxes.

The Storting resolved that no municipality or county council could impose a heavier tax than 19 per cent. on income. If the municipality should require still more to meet their engagements, a special application must be made to the Government, who will then have to look into the financial policy of the municipality in question.

The Regulation Law.—This law comes under the head of "Concession Laws," the first part of which has been reported on in a previous account.¹ This first part (how to acquire waterfalls, mines, and other property in Norway) of the Concession Law was made by the Radical Government then in office, and was much opposed, as it was based on a direct socialistic principle, viz. at the expiration of about eighty years the whole of the property, waterfalls, mines, etc., were to revert to the State *without any pecuniary compensation*. This radical policy and the Government were defeated before they got so far as making the second part of the Concession Law—the Regulation Law regulating the water in a watercourse for *industrial purposes*. The Conservatives termed the first part of the law a "Confiscation Law," but the succeeding Conservative Government would not alter it till it could be seen how the law acted *practically*. But the second part of the law, the Regulation Law, was based on the principle that the State cannot expropriate *without compensating the owner*, and this expropriation cannot take place before the expiry of sixty to eighty years, according to the terms of concession, if such is applied for. The main principle of the Regulation Law is also that the owner of the waterfalls with a connecting watercourse may regulate as much as he likes on his own property without the State interfering, but the law has at the same time so many restrictions in the way of precautions as to the manner of the regulating work being done that it will be necessary to apply for a "concession" even when the owner intends only to "regulate" on his own property. It is, of course, only just that if a man's regulation work—for instance, the damming-up of rivers, etc.—will cause damage and loss to other people residing outside his property, e.g., if floating of timber or the fishing is hindered, he must apply for a concession; and in the

¹ See Journal, N.S. vol. xi. p. 331.

terms stated there will be a fee to the State of 10 öre to 1 kroner per year (1s. 2d.) per horse-power obtained through such regulation of a watercourse. There will also be minor conditions, such as Norwegian labour being exclusively used when building, Norwegian working material preferably, etc.

This law has been a difficult one to frame, because on one hand the Government had to safeguard the Norwegian interests against foreign capital, which is trying hard to get hold of the very valuable waterfalls in Norway and monopolise the power; on the other hand the Government had to be careful not to make the conditions so strict as to frighten away the capitalists, native or foreign, desirous of investing in such property. Great industries are growing up round such "power stations"; a single company (for instance, the now famous Notodden Company for making nitrates of the air on the basis of the patent of the Norwegian Prof. Birkeland) has already no less than about half a million horse-power built out and under control. More than half the capital of this company is foreign (the share capital is £5,000,000), and it is the Government's duty to see that Norway's own interests are not squeezed out by such competition.

(ii) SWEDEN.

Amongst the various recent Swedish laws there are hardly any that can be of particular interest to the Society of Comparative Legislation except the **Election Law**. While the old election law resembled the British election law in so far as the political candidate who received the greatest number of votes in the particular constituency which he desired to represent in Parliament was elected, notwithstanding the fact that that perhaps two other candidates in the same constituency had together more votes than the one elected, the new Swedish election law is based on the same principle as, for instance, that which the French Radical party are fighting for, viz. that the different political parties shall be represented in Parliament by members proportioned to the votes given in the whole country for the particular political programme. It is of course only just that the minority of voters shall have the right and responsibility in political matters in proportion to their actual number and strength. The people give their votes for their candidates chosen to represent them in their constituency, but the actual number of the different political members in the Parliament is settled in proportion to the number of votes given.

5. RUSSIA.

[Contributed by L. P. RASTORGUEFF, ESQ., of the Russian Bar.]

During the year 1911 and the first half of the present year the following are the principal laws of general interest which have received the Imperial sanction :

Law of March 20, 1911 (Law of Copyright).—An analysis of this Law was given in this Journal in May 1912, No. XXVI.

Law of May 29, 1911 (Law of Land Settlement).—This Law is a further development of the Law of June 14, 1910, by which any peasant who desired it obtained recognition of his individual ownership of land which he had formerly held as a member of the commune. This new law of land settlement established the method of making the allotments, and enables two or more communes or groups of owners to readjust their holdings so as to avoid the strip system.

Law of December 15, 1911 (Extradition).—Till this Law the extradition of criminals was regulated by separate treaties made with foreign nations. This new Law does not affect the provisions in existing treaties, but lays it down that subsequent treaties must be concluded on the basis of this Law. The Law consists of twenty-five articles, of which the first provides that the crimes for which extradition of foreigners committing crimes outside Russia is demanded must be punishable by a not less sentence than imprisonment in both the countries in treaty. Extradition may be made not only for the crimes enumerated in the treaty with the other country, but for other crimes and by reciprocity.

Extradition is granted also in cases where the crime was committed for a political purpose. A Russian subject cannot be extradited. The demand for extradition must be made to the Minister of Foreign Affairs, and the right to grant or refuse it belongs to the Minister of Justice.

Law of January 13, 1912.—This Law repeals a provision of the Criminal Code which imposed the penalty of imprisonment on workmen who left their work before the termination of their employer's contract.

Law of January 20, 1912.—This Law extends rights which in Finland belong to Finnish citizens to all Russian subjects. Every Russian subject is now, therefore, eligible to vote or be elected, to serve in any public capacity, and to exercise the liberal professions in Finland equally with Fins. This Law also gives the right to make applications to Finnish institutions of all kinds in the Russian language, and obliges such institutions to respond in that language.

Law of December 19, 1912.—This Law gives Russian women, who have passed the necessary examinations, the right to be teachers of all subjects in the Preliminary and Middle Schools for both sexes, at the same remuneration as male teachers. There is a slight difference in the amount of pension of male and female teachers; the latter, however, keep their pensions in case of marriage.

6. UNITED STATES OF AMERICA—STATE LEGISLATION.

[*Contributed by R. NEWTON CRANE, ESQ.*]

There are now only six of the forty-eight States of the United States whose legislatures meet annually, and these are all Eastern States. They are part of the thirteen States which originally formed the American Union. In all of the other States the legislatures convene biennially, except Alabama, whose legislature meets only once in four years. It is also of interest to note that while the older States place no restriction of time upon the length of the sessions of the legislative body, the majority of the newer States, and those which meet only every other year, limit the sessions to sixty days. In Alabama, where, as has been stated, the meeting is only once in every four years, the sittings may last for fifty days only, while in Oregon and West Virginia they may not extend beyond forty and forty-five days respectively. In all of the States the legislators are paid for their services, but the payment is usually by the day, and ceases after the period fixed for the session. In this way concentration of business is secured, and temptation to long debates, blocking measures, and protracted sittings is avoided. In all but three of the forty-two States whose legislatures meet biennially, the sittings are in the odd years, and therefore there was an unusually large output of State legislation in 1911, but there was very little of a novel or an important character.

The Commission Form of Municipal Government is growing in popularity, and six States—Alabama, Montana, New Jersey, North Dakota, Utah, and Washington—passed laws authorising cities to adopt it. Generally speaking, the object of this legislation is to enable the smaller towns to elect a limited number of commissioners and entrust them with absolute authority in all municipal matters, thus giving them the power to enact and execute laws, and appoint and remove officials, and to conduct the affairs of the communities in their charge in a businesslike way. A very large number of cities are now satisfactorily governed in this manner, the chief gain being the abolition of the political “bosses” who, elected by an unlimited suffrage on partisan tickets, have plundered the municipal treasuries, enriched themselves and their followers by various forms of “graft,” and made themselves secure in political power.

Corrupt Practices Acts.—Several of the States, and among them Kansas, Maine, New Hampshire, New Jersey, Ohio, and Wisconsin, have passed laws to compel the disclosure of all expenditures by, and contributions made to, candidates in connection with elections, and in other ways to ensure the avoidance of corrupt practices. The Kansas Act is novel in that it requires that no person shall publish in a newspaper, either in its reading or advertising columns, any paid matter designed to aid, injure, or defeat a

candidate for public office, unless the name of some voter who is responsible therefor, with his residence, shall be appended thereto. No person shall pay the owner, editor, or publisher of a newspaper to induce him editorially to advocate or oppose any candidate. No limited liability company of a *quasi*-public nature shall pay or contribute anything in order to aid or prevent the nomination of a candidate for public office. The penalty for offences against the Act is \$10,000.

Absent Voters.—Provision is made in Kansas for the recording of the votes of qualified and registered electors who are absent from the precincts where, if they were at home, they would be entitled to record their votes. The Act is a very simple one, and provides that it shall be lawful for any qualified elector of the State, who has complied with the law of registration, and who may be unavoidably absent because his duties or occupations require him elsewhere within the State, to vote at any voting precinct where he may present himself for that purpose on the day of the election, provided that he shall not have voted elsewhere. Ballots so cast shall be put in a sealed envelope and forwarded, post prepaid, to the clerk of the county in which the voter is registered. Such a law is, of course, possible only in States where an election is held on the same day throughout the State.

Child and Female Labour.—Nearly all the States have now some regulations with respect to the employment and the hours of labour of children and women, and legislation on this subject has occupied the attention of eleven States in 1911 and 1912. In California and Massachusetts a universal eight-hour day for women's labour has been passed. Iowa has restricted their employment and provided for increased pay in dangerous employments. In Massachusetts a woman may not be employed for two weeks before or two weeks after confinement. In Illinois no boy under the age of sixteen, and no woman or girl of any age, shall be permitted to do any manual labour in or about any mine. Before a boy can be permitted to work in any mine he must produce an affidavit of his parent or guardian and other evidence as to his age.

Education.—In Indiana a Bill fixing a minimum salary for teachers in board schools has been passed. In Montana manual and industrial training, and in Ohio instruction in agriculture, is made a part of the regular course of study. In Nevada attendance at school is compulsory to the age of sixteen. In Washington a medical examination of all pupils is necessary. In Vermont a scheme for pensioning teachers has been adopted.

Crimes.—In Vermont a new law gives a jury the right to fix the penalty upon conviction of murder in the first degree. In New Jersey farms are established for the detention and correction of tramps and vagabonds. In Montana a novel Act has been passed which provides that it shall be unlawful for any police officer or any person charged with the custody of any one accused of crime to frighten or attempt to frighten by threats or torture or to resort to any means of an inhuman nature, or practise what is

commonly called the "third degree," in order to secure a confession from such person.

Enforcing Temperance: Tobacco and Minors.—There are fewer than usual of Acts to enforce temperance by legislation, probably for the reason that most of the prohibition laws seem to be working fairly well and to have the support of the communities where they prevail. In Alabama a local option law was passed which empowers the counties of the state to authorise or to prohibit the sale of vinous as well as spirituous liquors. In Minnesota, drinking in the passenger carriage of a railway train is forbidden, and in Missouri no intoxicated person may enter a church or a school, which would seem to relate to only a limited class of offenders. While South Dakota has repealed its anti-treating law in saloons, in Washington a most rigorous Act against the admission of minors of both sexes to places where drink is sold has been passed. It provides that every person who admits or allows to remain in any concert saloon, or any place where intoxicants are sold, or any dance house, public pool or billiard hall, or any place of entertainment injurious to health and morals, or shall sell or give any intoxicating liquor, cigar, cigarette, cigarette paper, or tobacco in any form to a person under the age of twenty-one, or shall sell or give a revolver or pistol or toy pistol to any person under the age of eighteen, shall be guilty of a gross misdemeanour. The Act further provides that any person under the age of twenty-one who shall purchase or shall have in his possession any intoxicating liquor, cigar, cigarette, cigarette paper, or tobacco in any form shall be guilty of a misdemeanour.

Sterilisation to Prevent Procreation by Undesirables.—Iowa has now joined the large number of States which provide for the sterilisation of certain classes of inmates of public institutions. As the law is very brief it may be set out practically in full as follows :

It shall be the duty of the managing officer of each public institution in the State entrusted with the custody or care of criminals, idiots, feeble-minded, imbeciles, drunkards, drug fiends, epileptics, and syphilitics, and they are hereby authorised and directed, to annually or oftener examine into the mental or physical condition of the inmates of such institutions, with a view of determining whether it is improper or inadvisable to allow any of such inmates to procreate, and to call into consultation the members of the State Board of parole. The members of such board and the managing officer, and the surgical superintendent of such institution, shall judge of such matters. If a majority of them shall decide that procreation by any such inmate would produce children with a tendency to disease, crime, insanity, feeble-mindedness, idiocy, or imbecility, and there is no probability that the condition of such inmate so examined will improve to such an extent as to render procreation advisable, or if the physical or mental condition of such inmate will be materially improved thereby, or if such inmate gives continued evidence that he or she is a moral or sexual pervert, then the surgeon of the institution shall perform the operation of vasectomy or ligation of the fallopian tubes, upon such person.

This law is extended to the cases of convicts who have been twice convicted of

prostitution, or living upon the wages of prostitutes, or have been three times convicted of felony.

The White Slave Traffic is dealt with by the legislatures of Montana, Oregon, Pennsylvania, Tennessee, Vermont, and Washington. The Pennsylvania law provides that any person who shall procure a female inmate for a house of prostitution, or who shall induce a female to become a prostitute, or who shall induce an inmate of a house of prostitution to remain therein, or to come within or go from the State for the purpose of entering such an establishment, or shall knowingly transport or aid in the transportation by means of any conveyance, into the State or through or across the State for the purpose of prostitution, or who shall knowingly receive money or other valuable thing, without consideration, from the earnings of a prostitute, shall be guilty of felony and be liable to solitary confinement for ten years.

In Tennessee the age of consent has been raised to twenty-one.

BRITISH EMPIRE.

I. BRITISH ISLES.

1. UNITED KINGDOM.

Acts passed—Public General, 58 ; Local and Personal, 190 ; Private, 1 ; Private (not printed), 4.

Among the Acts of the Session public attention was mainly directed to the National Insurance Act, which has already been considered by comparison with German legislation in an article by Dr. Schuster.¹

Aerial Navigation.—The Aerial Navigation Act (c. 4, U.K.) was introduced as a temporary measure “for the protection of the public against dangers arising from the navigation of aircraft,” but there is no time specified in the Act for its duration. Power is given to a Secretary of State—the Home Secretary—to prohibit by order the navigation of aircraft over prescribed areas. Any contravention of the order is an offence punishable with imprisonment for six months and a fine not exceeding £200, unless the person navigating the aircraft proves that he was compelled “by reason of stress of weather or of other circumstances over which he held no control.” The first notice issued under the Act was to prohibit navigation of aircraft over London on June 22, 23, and 29—the days of the royal processions in connection with the Coronation—and over Penge and Beckenham on June 30—the day of the King’s visit to the Crystal Palace.

Protection of Animals.—A significant sign of the progress which has been made in the more humane treatment of animals is the abandonment in an Act promoted by the Society for the Prevention of Cruelty to Animals of the old title “cruelty to animals” and the substitution of the phrase “the protection of animals.” Seven of the old Acts and sections of two others are consolidated in the Protection of Animals Act, 1911 (c. 27, E.I.), which also incorporates some amendments of the law. The maximum penalty for cruelty is increased from £5 to £25, and the imprisonment from three months to six months. The Court, if satisfied that it would be cruel to keep the animal alive, may order its destruction at the expense of the owner. Uniform conditions are enacted for the conduct of knackers’ yards, and

¹ See Journal, N.S. vol. x. p. 11.

spring-traps must be inspected by some competent person at least once every day. The Act also contains an extension of the general powers of the Board of Agriculture in regard to the making of Orders.

Army.—The power conferred on the police authorities by the Army Act¹ to make lists of carriages and animals for use by the Army authorities in case of emergency is transferred by the Army Act (c. 3, U.K.) to the county association established under the Territorial and Reserve Forces Act, 1907.² The necessary powers of entry and inspection are given to the officers authorised by the County Association. In the case of objection by the occupier the officer must be accompanied by a constable furnished with a search warrant from a justice.

Before a woman can take proceedings against a soldier for an affiliation order she must deposit with the commanding officer a sum of money sufficient to cover the expenses of enabling the defendant to attend the hearing of the case. The amount may be included as part of the costs, but the practical effect of the legislation on the point has been that the woman could not recover this deposit from the soldier while he remained in the Army. It may now be repaid to her by the Army Council, who may deduct the amount from the pay of the soldier.

Military Manœuvres.—An amending Act (c. 44, E.S.) has been passed to make some modifications in the Military Manœuvres Act, 1897.³ The legal interpretation of the Act has been that an area scheduled for manœuvres was to be considered as having been used even if the manœuvres never took place. The amending Act incorporates common sense by nullifying the scheduling of the area, and further removes the restriction that manœuvres can be held in the same area within five years if the local authority assent to the repetition. The period of notification to the local authority is reduced from six months to four if the notice is sent out before April 30. Enclosed woods, plantations, and parks are made available for manœuvres, and the procedure for closing roads is simplified by giving military officers the power to obtain the authority from the justices to make the orders for themselves. An amending section relates to the representation of Scotland on the Military Manœuvres Commission by abolishing the representation of burghs with a population under 10,000. A penalty is imposed upon persons endeavouring to forbid the use of land or water authorised for use in the manœuvres.

Colonial Governors.—The Acts of 1865⁴ and 1872⁵ respecting the pensions of Colonial Governors are repealed and re-enacted with modifications in the Pensions (Governors of Dominions, etc.) Act (c. 24, B.E.). Hitherto the basis of the pension system has been the amount of pay instead of the importance of the work. Under the new Act the Governors will be divided into four classes according to the responsibility of their posts. The amounts

¹ 44 & 45 Vict. c. 58, s. 114.

² 7 Ed. VII. c. 9. See *Legislation of the Empire*, vol. i. p. 139.

³ 60 & 61 Vict. c. 43. ⁴ 28 & 29 Vict. c. 113. ⁵ 35 & 36 Vict. c. 29.

will be for every completed month of service—first class £5, second £4, third £3, and fourth £2. The maximum is not to exceed £1,300. The conditions are thus made to correspond to those of a diplomatic representative at one of the lesser Courts in Europe or elsewhere. Provision is made for deductions on account of the receipt of pensions from another source and for advancement to a higher rate of pension. Governors now serving have the option to come under the new Act or continue under the regulations in force.

Constitution.—The Parliament Act (c. 13, U.K.) substitutes five for seven years for the duration of Parliament fixed by the Act of 1716. Nothing in the Act is to “diminish or qualify the existing rights and privileges of the House of Commons.” The Act applies only to public bills, and provides that the enacting clause in any Act passed without the assent of the House of Lords shall state that it is enacted “in accordance with the provisions of the Parliament Act, 1911.” The certificates issued by the Speaker in accordance with the requirements of the Act “shall not be questioned in any court of law.” A bill other than a money bill or one to extend the duration of Parliament may be passed into law even after rejection by the House of Lords under certain prescribed conditions. It must have been sent up to them in three successive sessions, whether in the same Parliament or not, at least one month before the end of each, and have been rejected three times. The date of the third reading on the last occasion in the House of Commons must be more than two years after the date of the second reading on the first consideration. When these conditions have been satisfied the Speaker may issue his certificate to that effect, and the bill, unless the House of Commons direct to the contrary, may be presented to His Majesty to receive the royal assent. Supplementary provisions are made with the object of defining what is to be considered rejection by the House of Lords, and the modifications which may be made without vitiating the procedure on the ground that the bill is not the same. The provisions of the Act in regard to money bills are more drastic. A money bill which does not receive the approval of the House of Lords without amendment within one month after being sent up may be presented to His Majesty to receive royal assent. The final decision as to whether the bill is or is not a money bill is left to the Speaker of the House of Commons, who “shall consult, if practicable; two members to be appointed from the Chairmen’s Panel at the beginning of each session by the Committee of Selection.” The bill must be endorsed with the Speaker’s certificate that it is a money bill before being sent to the House of Lords.

Conveyancing.—After being before Parliament for several years an Act (c. 37, E.) was passed to effect various amendments in the Conveyancing Act, 1881, which have been advocated for some years by the Law Society.

Copyright.—The Copyright Act (c. 46, U.K.) consolidates and amends

the whole law of copyright. The principal changes effected in the existing law may be briefly summarised in the words of Mr. E. J. Macgillivray:¹

1. Extension of the term of copyright to life and fifty years (subject to certain exceptions).

2. Provision that the last twenty-five years of the term of copyright shall be unassignable by the author during his lifetime.

3. Provision that during the last twenty-five years any person may reproduce a work without consent on payment of a 10 per cent. royalty.

4. Exclusive right of dramatising and translating secured to the author.

5. Dramatic works entitled to protection include pieces in dumb show, ballets and cinematograph productions, and the copyright is infringed by the making or exhibiting of unauthorised cinematograph films.

6. Subject to the right in certain circumstances of making records upon payment of a royalty, the composer of a musical composition gets the sole right of adapting his composition for use upon mechanical instruments.

7. Subject to limitations in respect of remedies, and to the right of making paintings, drawings, engravings or photographs of any architectural work, architectural works are included among artistic works entitled to protection.

8. Taking of short passages for insertion in school books is permitted.

9. Subject to conditions and limitations, an exclusive right of oral delivery is conferred in respect of non-dramatic works, such as lectures, speeches, and sermons.

10. Summary remedies, hitherto confined to infringements of musical works, are made applicable to all classes of works, and to infringements of performing rights, but the remedies are not so complete as in the case of musical works.

11. The National Library of Wales is, subject to limitations, included as one of the libraries entitled to free copies of books from the publishers.

12. Copyright subsists from the time a work is created, the condition of protection being, in the case of an unpublished work, that the author is a British subject or resident, and in the case of a published work, that it was first published within the Dominions to which the Act applies.

13. Common law right in unpublished works is abrogated, but in the case of a literary, dramatic, or musical work, or an engraving, copyright subsists until publication notwithstanding the expiration of the period of life and fifty years, and if publication is posthumous, then for fifty years after publication.

14. No copyright vests in the proprietor of a collective work unless the author is employed under a contract of service or apprenticeship, or there is an assignment in writing; and when the copyright vests in the proprietor of a periodical by reason of a contract of service or apprenticeship, the author may restrain separate publication.

¹ The Copyright Act, 1911, annotated: Introduction, pp. iv-vi.

15. The passing of the copyright by reason of the work having been executed on commission is confined to the cases of engravings, photographs, and portraits.

16. The self-governing Dominions are given a free hand in copyright matters. Each Dominion may adopt or reject the Imperial Act as it pleases. Similarly, each Dominion may adhere to the Revised Convention or to the original Berne Convention, or it may decline to adhere to either, and so place itself in the position of a non-union country.

Criminal Law.—For many years attempts have been made from time to time to consolidate the criminal law.¹ A first instalment has received the royal assent in the Perjury Act (c. 6, E.). The whole law on the subject is now contained in nineteen sections, and, except in minor details necessary to remove inconsistencies, no change has been made. The amount of work involved in the preparation of an Act of this kind may be gauged from the fact that it required the examination and consideration of 260 Acts of Parliament before the substance of the numerous sections scattered over them could be compressed into the present measure.

Crown Lands.—The objects of the National Gallery and St. James's Park Act, 1911 (c. 23, E.), are "to appropriate certain lands for the purposes of the National Gallery and the National Portrait Gallery for other purposes connected therewith, and to make provision with respect to certain Crown lands forming part of or adjacent to St. James's Park." The former is a transfer of land forming part of St. George's Barracks so that it may be available if needed for an extension of the Art Galleries. The second object confirms an exchange of land between the Crown and the London County Council in connection with the new Admiralty Arch.

Education.—Some details of educational administration are embodied in the Education (Administrative Provisions) Act (c. 52, E.). Two points may be noticed. One is in regard to "border children," that is, children living in the area of one local authority and attending the school of another. The Act requires the one authority to indemnify the other. The second point affects the powers of local authorities in regard to building by-laws, and gives an overriding authority to the Board of Education with the object of effecting economy in the cost of building.

University of Wales.—A short Act (c. 43) confers upon the University of Wales the right already granted to the new Universities of Sheffield and Bristol of giving to graduates in the faculties of Medicine and Surgery the right to be registered under the Medical Acts, and at the same time it provides for the representation of the University upon the General Medical Council.

Elections.—The object of the Municipal Elections (Corrupt and Illegal Practices) Act (c. 7, U.K.) is to extend the law protecting candidates at

¹ For a history of those efforts see "The Resurrection of our Criminal Code," by H. J. Randall, *Law Quarterly Review*, vol. xxvii. p. 209.

parliamentary elections against false statements about personal character or conduct to candidates at municipal elections.

Factories.—The Factory and Workshop (Cotton Cloth Factories) Act, 1911 (c. 21, U.K.), corresponds exactly in form with a similar Act passed in 1897.¹ It gives the Home Secretary power to make regulations to carry out the recommendations of a departmental committee, which reported in 1911² upon the humidity and ventilation in the factories as affecting the health of the workers.

Finance.—The Revenue Act, 1911 (c. 2, U.K.), is merely a supplement to the Finance Act of the previous year.³ Any contract made for the payment of increment value duty by the transferee or lessee of land is declared to be void. Various other amendments are made in the portion relating to duties on land values. The sections relating to excise define the method of determining the annual value of premises for the purpose of excise licences. For the purpose of assessing and recovering super-tax upon the joint income of a husband and wife the latter may be required to make a return and pay a proportion of the tax. Provision is made as to the payment of income tax in any year previously to the passing of the Act imposing the tax for that year. An amendment is made in the principal Act by allowing exemptions from increased stamp duty in certain cases where the consideration other than rent exceeds a capital sum of £500. The section of the principal Act giving half the proceeds of the duties on land values to the local authorities is suspended until 1914. The reduction in the amount derived from whisky money is made good out of the Consolidated Fund up to the amount which the tax produced in 1908-9. One section relating to the National Debt allows the aggregate income and expenditure of 1909-10 and of 1910-11 to be added together in order to calculate the amount of the old Sinking Fund in the current financial year, in order to avoid the confusion which must otherwise arise, owing to the difference in the periods at which the taxes were collected in the two years.

The annual Finance Act (c. 48, U.K.), for which the Speaker did not issue a certificate under the Parliament Act, mainly continues previous taxation. Amendments are made in the Finance Act of last year in regard to licensed premises, the minimum duty in rural districts, and the provision for payment of the duty in two instalments. A reduced duty is placed on spirits required for scientific and medicinal purposes. Motor fire engines and the spirit required for them are exempted from duty. A loan of £250,000 is authorised for improved railway communication and harbours in the East Africa Protectorate. Arrangement is also made for the transfer of consols by deed instead of by personal attendance at the Bank of England. There are the usual other financial measures, including the authorisation of loans for public works.

¹ 60 & 61 Vict. c. 58.

² See Journal, vol. xii. p. 362.

³ Parliamentary Paper [Cd. 5566].

Geneva Convention, 1906.—By Article 27 of the Geneva Convention of 1906, it was proposed that the signatory powers should prohibit by legislation the use of the emblem or the name of Red Cross or Geneva Cross by private individuals or societies, and in particular for commercial purposes as a trading mark or trading name. The Geneva Convention Act (c. 20, B.E.) makes this prohibition with a period of grace of four years to the owners of existing registered trade marks contrary to its provisions. Thus the British Government can withdraw this reservation, subject to which the Convention was signed.

India.—The High Court of Calcutta has jurisdiction over a population of more than 86,000,000 people. For some time the business had been in a state of congestion, although special tribunals had been at work in addition to fifteen judges—the maximum number allowed by the Indian High Courts Act, 1861.¹ An amending Act (c. 18) increases the number to twenty. At the same time it gives power to establish an additional High Court in any part of British India, since previously there was no means to give a Court of its own to the new province of Eastern Bengal and Assam. The Act also authorises the appointment by the Governor-General of temporary judges for such period not exceeding two years as may be required.

Another small measure is the Government of India Act Amendment Act (c. 25). The Secretary of State has power to provide pensions for officers by rules the same as those of the Treasury of the United Kingdom. By the Superannuation Act, 1909,² the power of the Treasury was extended to allow them to make gratuities to the legal representatives of deceased civil servants. By the amendment of the Government of India Act³ a similar power is given to the Secretary of State for India.

Lunacy.—The Lunacy Act (c. 40, E.) carries out three small but useful recommendations of the Royal Commission on the Care of the Feeble-minded, which reported in 1908. It amalgamates the Masters in Lunacy, the Lord Chancellor's Visitors, and the Commissioners in Lunacy with their respective officers into one body. It authorises the appointment of two more medical Lunacy Commissioners, owing to the large increase in the amount of work, and provides that the unpaid Commissioners may include women.

Merchandise Marks.—For the detection of fraudulent use of trade marks the Commissioners of Customs are authorised by an amendment (c. 31, U.K.) of the Merchandise Marks Act, 1887, to require an importer to furnish particulars of the persons by and to whom the goods were consigned, and to communicate the information to the person whose name or trade mark, it is alleged, has been used upon them.

Merchant Shipping.—S. 62 of the Merchant Shipping Act, 1906,⁴ read in conjunction with s. 141 of the Merchant Shipping Act, 1894,⁵ has caused

¹ 24 & 25 Vict. c. 104.

² 9 Ed. VII. c. 10.

³ 21 & 22 Vict. c. 106.

⁴ 6 Ed. VII. c. 48.

⁵ 57 & 58 Vict. c. 60.

some doubt in respect to the payment on behalf of seamen of what are called "allotment notes." A seamen may make an agreement with an owner for the allotment of half his wages during his absence to a near relative or the savings bank, and the agreement might require that the amount should be paid monthly. But the Acts were so worded that it was not clear whether more than one-half of the wages might be paid, or if the money could be paid at shorter intervals. In the interests of the relatives it was obviously desirable that both arrangements should be permissible in the agreement. Accordingly the doubts are removed by the Merchant Shipping (Seamen's Allotment) Act (c. 8, U.K.).

The object of the Merchant Shipping (Stevedores and Trimmers) Act (c. 41, U.K.) is to give a remedy to men having claims for work done in connection with the stowing or discharging of ships' cargoes, or the trimming of coal on board ships of which the owner is a foreigner without residence in this country. By this Act the men may apply to the Court for an order for the arrest of the ship by a customs officer until the claim is satisfied or adequate security given. If there is a risk that the ship may get away before the order can be made, the Board of Trade may detain it until the application can be made to the Court. The Act applies to charterers as well as to owners.

Part VIII. of the Merchant Shipping Act, 1894,¹ is extended (c. 42, U.K.) so as to give jurisdiction to British Courts in foreign countries in cases relating to the liability of shipowners for damages.

An amendment in the law relating to collisions between vessels and salvage is made by c. 57, so as to bring it into harmony with the conventions on those subjects made at Brussels in 1910.

Mines.—The Coal Mines Act (c. 50) contains the provisions of seven Acts relating to that particular class of mines, and incorporates certain amendments of the law. It follows closely the lines of similar legislation in the Dominions, and the certificates of competency granted in a British Dominion when the standard is equivalent to the English will be accepted in lieu of an examination. Power is given to the Secretary of State to secure that the manager shall give his undivided attention to a mine. After January 1, 1913, foremen and their deputies are added to the persons employed in a mine who are required to possess certificates of qualification. Particulars must be sent every year to the inspector as to the supply and maintenance of means of rescue, and the measures taken to train the men in their use. Additional precautions are enforced for the prevention of accidents by improved means of ventilation, more stringent requirements in regard to safety lamps, restrictions on the use of electricity, and measures for the prevention of dust. Fresh arrangements are to be introduced to secure greater safety in the working of the cages. The travelling and haulage roads are to be extended and detailed requirements specified in regard to the apparatus on the

¹ 57 & 58 Vict. c. 60.

latter. Contractors are no longer to be allowed to do the work of supporting the roof and sides, and the arrangements made for that purpose are to accord with the scheme set forth in the Act.

Regulations will also prescribe the code of signalling to be used in the mine, and for the care and treatment of horses and other animals.

Many of the new requirements are an attempt to make the men more careful, but cleanliness is to be optional upon the request of two-thirds ascertained by a ballot, and the men are required to pay half the cost of maintenance of the baths—not to be more than $1\frac{1}{2}d.$ per week.

Moneylenders.—A defect in the Moneylenders Act, 1900,¹ has been revealed by the judgment in the case of *In re Robinson*.² The effect of s. 2 of the principal Act is that any agreement or security taken by a moneylender, otherwise than in his registered name, is void *ab initio*. Further, the result of *In re Robinson* is that any person who in good faith and for value after taking all reasonable precautions to protect himself accepts an assignment of any agreement or security so rendered void is in no better position than the moneylender. The effect of s. 1 of the amending Act (c. 38, U.K.) is to reverse this decision by requiring the moneylender to indemnify the assignee, but not if the latter is himself a moneylender. The second section prohibits a moneylender from implying either by circular or any other means that he carries on a banking business.

Naval Discipline.—An Act (c. 47, B.E.) was required to give effect to an agreement made at the Imperial Conference with respect to the government and discipline of the naval forces of the self-governing Dominions. Its object is to secure that the various forces when operating together should be treated as one navy, and is effected by mutual agreement between the respective governments.

Official Secrets.—The Official Secrets Act, 1911 (c. 28, U.K.), re-enacts the Act of 1889³ with amendments. The chief change is one of procedure. Under the old Act a person found in an arsenal taking sketches could be prosecuted, but it lay with the prosecution to prove that he had an ulterior object. Under the new Act if he is found in a place connected with the defence of the country under suspicious circumstances it is for him to prove that his object was quite innocent. The scope of the Act is widened by being made applicable to private dockyards and similar places that may be necessary in addition to Government property. Proceedings must still be instituted by consent of the Attorney-General, but it is no longer necessary to await his grant before issuing the warrant for arrest. In case of great emergency a superintendent of police may issue a search warrant.

Old Age Pensions.—An amendment of the Old Age Pensions Act⁴ by c. 16 contains some minor though important modifications. In calculating the means no account was taken in the principal Act of the

¹ 63 & 64 Vict. c. 51.

² [1910] 2 Ch. 571.

³ 52 & 53 Vict. c. 52.

⁴ 8 Ed. VII. c. 40. See Journal, N.S. vol. x. p. 303.

many old people who hoard money. By the Act of 1911 it will be regarded as producing interest at 5 per cent. One of a married couple living together in the same house is considered to have half the total means of the couple. In the provisions as to nationality or residence any disability is removed from a British woman on account of having married an alien who is otherwise qualified if he is dead or she has for a period of not less than two years been legally separated from or deserted by him. It is also made a statutory condition for the receipt of a pension that the applicant has for at least twelve out of the twenty years up to the date of the receipt of the pension been resident in the United Kingdom with certain provisoes, including exemptions for soldiers and sailors. The disqualifications for the receipt of pensions owing to the receipt of relief are removed, so that relief granted to a wife or relation is not treated as relief given to the person liable for their maintenance. The disqualifying period after imprisonment is reduced to two years, provided that the sentence without the option of a fine was not for a period exceeding six weeks. A conviction under the Inebriates Act, 1898,¹ is a disqualification for receiving a pension for six months, unless the Court directs to the contrary. No pension is to be paid to a person absent from the United Kingdom nor after three months from the date on which it becomes payable. Modifications are also made in the principal Act in regard to the procedure for reviewing the grant and amount of pensions.

Parsonages.—The object of the Parsonages Act (c. 29, E.) is to correct three technical defects in the statutes relating to Queen Anne's Bounty. When a residence was sold the money had to be separately invested in consols, even if the Governors of the Bounty held other funds for the same benefice. The Act removes this inconvenience. Second, if the incumbent were homeless he could not have the use of the interest on the money pending the erection of a new residence. The Governors are now granted the necessary discretion to make an allowance. When a house was sold upon which there was a loan for repairs it had still to run, and could not be paid off. The Act removes that anomaly.

Poultry.—The Diseases of Animals Act, 1894,² gives power to the Board of Agriculture to make orders for the preventing and checking of diseases and a number of other matters in connection with the care of animals. To them are added by c. 11 (U.K.) the following purposes :

- “(a) For protecting live poultry from unnecessary suffering while being conveyed by land or water, and in connection with their exposure for sale and their disposal after sale ;
- “(b) for requiring the cleansing or disinfection of receptacles or vehicles used for the conveyance of live poultry.”

¹ 61 & 62 Vict. c. 60. See *Legislation of the Empire*, vol. i. p. 19.

² 57 & 58 Vict. c. 57, s. 22.

Inspectors of the Board are given the necessary authority to secure the enforcement of any Orders made under the Act.

Public Health.—Flock manufactured from dirty rags is a fruitful source of infection when used for articles of upholstery, cushions, or bedding. Its sale is prohibited, therefore, by the Rag Flock Act (U.K. c. 52), unless the flock conforms to a certain standard of cleanliness prescribed by regulations of the Local Government Board. The purchase of the flock under a warranty that it complies with the required conditions will not be a defence against a prosecution, unless the purchaser has taken reasonable steps to ascertain and did in fact believe in the accuracy of the statement contained in the warranty. The purchaser thus charged may then escape conviction by having the original vendor brought before the Court. The possession of flock is a presumption that it is intended for sale or manufacture unless the contrary is proved.

Railways.—An “agreed” measure (c. 34, U.K.) embodies the recommendations of a Committee in regard to the form in which the accounts and returns of the railway companies should be presented to the Board of Trade. It consists principally of a long schedule containing model forms.

Shops.—Only a portion of the original Shops Bill received the approval of the House of Commons. The Act (c. 54, U.K.) secures a half-holiday from 1.30 p.m. to shop assistants on one day in the week, except in the week preceding a public holiday if in addition to that day there is a half-holiday in the same week. The Act also specifies a time-table of time to be allowed for meals. The Act does not apply to premises for the sale of intoxicating liquors, refreshments, motor, cycle, and air-craft supplies and accessories, newspapers and periodicals, meat, fish, milk, cream, bread, confectionery, fruit, vegetables, flowers, and other articles of a perishable nature, tobacco and smokers’ requisites, medicines and medical or surgical appliances, the business carried on at a railway bookstall on or adjoining a platform, and the retail trade carried on at an exhibition, if it be certified by the local authority to be subsidiary to its main purpose. Shops in which Post Office telegraph business is conducted are wholly exempt, and other post offices to the extent certified by the Postmaster-General, provided that the Postmaster-General shall make the best arrangements possible to secure that the conditions of service of the assistants are not less favourable than those secured by the Act. The shops must be closed at one o’clock, that is, half an hour before the assistant is free. Each shopkeeper is to choose and announce in the shop his day for closing early, unless the local authority with the approval of the shopkeepers has made a general order.

The wording and machinery of the Act are cumbrous, but it seems to be intended that the local authority may take a poll of the shopkeepers in favour of a total or partial exemption from the operation of the Act, and if one-half vote in favour an order may be made to that effect. The

obligation to give the half-day to the assistants is not, however, removed by that proceeding. In holiday resorts the shops may be exempted from closing for not more than four months in the year. If two-thirds of the shopkeepers exempt from the operation of the Act desire to be included the local authority may make an order. Pressure is brought to bear upon the local authorities by means of local inquiries by inspectors sent down by the Secretary of State. The penalties for infringements of the Act are first offence £1, second £5, and third £10. Nothing in the Act is to prevent the supply of necessities for ships.

Telephones.—The Telephone Transfer Act (c. 26, U.K.) is necessary in order to carry out agreements made in 1905 for the transfer to the State by the National Telephone Company of the telephones at the end of the year 1911. The first part of the Act is concerned with the raising of the purchase money and the expenditure upon the extension of the system. The company pay to the Post Office £1,600,000 in respect of subscriptions received in advance. That sum is returned as part of the purchase money, and the remainder of the cash payment is borrowed by means of terminable annuities to be repaid within twenty years. The portion of the purchase money not payable in cash is to be taken in securities in the form of terminable annuities or exchequer bonds. The second part of the Act deals with the conditions of transfer of the company's officers, especially in regard to superannuation allowances. By an amending Act (c. 56) a payment on account of not more than £3,000,000 is authorised, so as to pay off the company's debenture holders.

The Telegraph Construction Act (c. 39, U.K.) carries out an arrangement made between the Postmaster-General and representatives of railway and canal companies by which he will be permitted to carry telegraph and telephone wires over railways and canals occurring in the course of a line. Previously such small pieces occurring in a long stretch were supposed to be maintained by the companies.

An extension (c. 36) of the Pacific Cable Act, 1901,¹ authorises the expenditure upon a cable between Australia and New Zealand, as approved by the Governments contributing to the cable.

Scotland.—The Intestate Husbands' Estate Act (c. 105) amends the law regulating the widows' right in the estate of an intestate husband. If it does not exceed £500 in value, she takes the whole. If it is more, she is a creditor to the amount of £500 with 4 per cent. interest until payment. As between the heir to the property and the representatives of the movable estate that charge is to be borne in proportion to the net values of the two portions. The Act sets forth the basis upon which to calculate the value of each.

By an amendment (c. 30) of the Public Health (Scotland) Act, 1897,²

¹ 1 Ed. VII. c. 31. See *Legislation of the Empire*, vol. i. pp. 90-91.

² 60 & 61 Vict. c. 38.

statutory bodies of trustees or commissioners authorised to supply water by any local Act are given the same power to lay and carry water pipes and sewers, and so freeing them from certain restrictions existing under the principal Act.

The case for the Small Landholders Act (c. 49, S.), which had been before Parliament for some time, gained strength from the statistics of the Census of 1911, showing the lowest increase of population since 1861, and that in four counties there is a smaller population than there was a hundred years ago. The object of the Act is to give some encouragement to the small landholder that he may be induced to stay on the land by having an increased security of tenure. The Act establishes a Land Court, consisting of five persons appointed by the Secretary of Scotland, of whom the chairman, being an advocate of ten years' standing, shall have the status of a judge of the Court of Session, with a salary of £2,000 per annum and the same pension rights. The other members, of whom one must be able to speak the Gaelic language, receive £1,200 per annum. To them are transferred all the powers and duties of the Crofter Commissioners. The Court may determine questions of law and fact, and on request may state a special case for the determination of the Court of Session. It may hear witnesses on oath, and the chairman has the power of the Lord Ordinary to punish for contempt. Three members form a quorum, but they may delegate any of their powers to one or two members to sit with land valuers, assessors, or other skilled persons, but their decision will be subject to review by the full Court. The Act also creates a Scottish Board of Agriculture, consisting of three persons, to receive salaries of unspecified amounts. They are charged "with the general duty of promoting the interests of agriculture, forestry, and other rural industries," and to undertake such duties as are now exercised by the Board of Agriculture and Fisheries, and may be assigned by Order-in-Council. One of the members of the Board is to be designated the Commissioner for Small Holdings. A fund of £200,000 per annum is placed at the disposal of the Board, with any sum standing to the credit of the Congested Districts (Scotland) Fund, to be expended for the purpose of facilitating the enlargement or construction of new landholders' holdings and the improvement of dwelling-houses or other buildings of landholders and cotters. The Commissioner for Small Holdings is to inquire and report what demand exists for small holdings, and so far as possible to negotiate with the landlords a scheme for the registration by agreement of new holders. The Board, either by gift or loan, may assist work required to be done in connection with the acquisition of the property, and may compensate a disturbed tenant. If the landlord declines to negotiate the Board may apply to the Land Court to exercise their compulsory powers to determine a scheme in which compensation may be given either to the landlord or tenant. If the amount involved is more than £400, and the person concerned considers himself to be

aggrieved, he may appeal to the Court of Session. The new holder must satisfy the Board as to his ability to fulfil the obligations incumbent upon him, and *ceteris paribus* the Board must give a preference to applicants preferred by the landlord. Farms of 150 acres owned by persons with no other farming interest, and farms of large acreage mainly pastoral and not more than £80 yearly value, are exempt from the compulsory provisions of the Act. Failure by a landholder to repay a loan may be followed by his removal by order of the Land Court. If on account of illness, old age, or any other infirmity he becomes unable to work his holding, the Land Court may authorise its assignment to any one who might succeed him in case of intestacy. Numerous amendments are made in the Crofters and Agricultural Holdings Acts, and the whole Act is a specimen of involved terminology and defective form, due to the insertion of a number of amendments, which increased its length by several pages.

The object of the House Letting and Rating Act (c. 53, S.) is to remove the inconveniences of the old system of house-letting as they concern the small householder. It applies in burghs or districts with a population of less than 20,000 to houses of £10 per annum or under, in districts of over 20,000 and less than 50,000 to houses of £15, and over 50,000 to those of a rental of £21. Instead of having to take a house four months ahead, the tenant will not be bound by any agreement made more than two months before the date of occupation. The Act introduces a system of "short lets" similar to that in England. If a tenancy is for more than three months, forty days' notice is necessary, for three months or less a notice of at least one-third of the period, and for one month or less at least five days. If the rent is in arrear for not less than seven days, the owner may give forty-eight hours' notice and proceed to obtain a warrant of ejection. Complementary to these new arrangements is a modification in the rating incidence by which the owner instead of the occupier is made liable, and the Act contains the necessary procedure for this purpose.

Ice cream and aerated water shops have not been so harmless in Scotland as their avowed objects would suggest, but owing to a technical defect the police powers over them are inadequate. An amendment is therefore made to the Burgh Police Scotland Act, 1903,¹ so as to give a general power over places of public refreshment which will enable the police to control the hours of opening and closing these premises. It also gives local authorities the power to regulate the internal structure of these ice-cream shops.

Ireland.—The Public Libraries (Art Galleries in County Boroughs, Ireland) Act (c. 9) is really a general piece of legislation to deal with a particular case. It allows the levy of one halfpenny in addition to the penny public library rate for the maintenance of an art gallery, and gives to the Corporation of Dublin authority, with the sanction of the Local Government Board, to pay any expenses in connection with the maintenance or preservation of the

¹ 3 Ed. VII. c. 33. See *Legislation of the Empire*, vol. i. p. 112.

works of art in the Municipal Gallery of Modern Art. The whole purpose of this Act is the maintenance of this admirable little collection of French, Spanish, and Irish art preserved in an interesting house.

Many urban district councils had provided public slaughter-houses, but had no power to enforce their use. C. 12 gives them power to make by-laws providing for the inspection of all meat intended for human consumption, and prohibiting the sale of any which has not been subjected to inspection. The indirect result will thus be to secure the use of the slaughter-houses.

The Labourers (Ireland) Act (c. 19) is an extension of the Labourers Act of 1906,¹ of which the main object was to build cottages. The money authorised under that Act has been expended, and this Act provides another £1,000,000, calculated to be sufficient to build 6,000 cottages. Part of the money is provided by taking £36,000 in cash and £30,000 in consols from the dormant suitors' funds. The Act also authorises the Irish Local Government Board to bring pressure to bear upon the local authorities to demolish houses unfit for habitation. It is a curious comment upon this beneficent kind of legislation that cottages which have been allowed to stand ostensibly for the use of pigs or cattle have afterwards been found in the occupation of human beings. It appears, therefore, that the only satisfactory remedy is the removal of the cottage.

The Public Roads (Ireland) Act (c. 45) assimilates the law of Ireland to that which prevails in England and Scotland in regard to extraordinary traffic upon highways. It enables highway authorities to recover damages for injury done, makes provision as to the weight of traction engines and the construction of their wheels, contains regulations as to the number of men who should attend traction engines, requirements in regard to the consumption of smoke and the prevention of sparks, and authority for county authorities to make by-laws for licensing traction engines.

The Resident Magistrates (Belfast) Act (c. 58) is a small amending Act only applying to that city, and referring to the salaries, superannuation, appointment, and powers of resident magistrates.

Women are made eligible as county or borough councillors or aldermen in Ireland by the Local Authorities (Ireland) (Qualification of Women) Act (c. 35).

Isle of Man.—In addition to the annual Customs Act (c. 14) passed in accordance with immemorial custom, the legislation includes an Act (c. 33) relating to the harbours of the island. Port Erin, which has hitherto been exempt from general legislation, is now included, and power is given to the Harbour Commissioners, subject to the approval of the Tynwald Court, in regard to dues and other matters concerning the administration of the Act. A section is included evidently directed against Sunday travelling, as duty on each passenger on Sundays between the hours of 8 a.m. and 5 p.m. may be raised from 3*d.* to an amount not exceeding 1*s.*

¹ 6 Ed. VII. c. 37.

2. THE ISLE OF MAN.

[Contributed by HIS HONOUR S. STEVENSON MOORE, *Chief Deemster*.]

No legislation of general interest was passed in the year.

3. JERSEY.

[Contributed by E. T. NICOLLE, Esq.]

Law to suppress fraud in sales of artificial manures, passed by the States and confirmed by Order-in-Council, July 5, 1911. The law is practically a translation of the English Act.

II. BRITISH INDIA.

[Contributed by SIR COURTENAY ILBERT, G.C.B., K.C.S.I., C.I.E.]

1. ACTS OF GOVERNOR-GENERAL IN COUNCIL.

Acts passed—19.

Opium.—The Opium (Amendment) Act, 1911 (No. 1), transfers the supervision of the Opium Department from the Bengal Board of Revenue to the Board of Revenue for the United Provinces, where the Opium Agent has his headquarters and the bulk of the poppy cultivation now takes place.

Patents and Designs.—The Indian Patent and Designs Act, 1911 (No. 2), takes the place of the Inventions and Designs Act, 1888, and is framed generally on the lines of the English Patents and Designs Act, 1907.¹ The Bill as introduced did not contain a provision corresponding to s. 27 of the English Act which provides for the revocation of patents worked mainly outside the United Kingdom, but s. 23 of the Indian Act, which was inserted in committee, now contains provisions to a similar effect.

Criminal Tribes.—The Criminal Tribes Act, 1911 (No. 3), supersedes the Criminal Tribes Act of 1871 and the two amending Acts of 1876 and 1897. Mr. Jenkins, in introducing the Bill, gave an interesting description of the Indian criminal tribes and of the methods adopted for their surveillance and control. The criminal tribes may be roughly divided into three classes. There are tribes which, though originally criminal, have now settled down to honest occupations, although some sections of them, and many individuals, still live by crime. To that class belong Kolis, Bhils, and Ramusis. They

¹ 7 Ed. VII. c. 29. See *Legislation of the Empire*, vol. i. p. 155.

are not wholly criminal, but in some parts of the country, for instance in Poona, "if you don't pay a Ramusi watchman you stand a good chance of having your house looted." Then there are tribes who have settled abodes, and generally some ostensible occupation, but who periodically proceed on raids, often at a great distance from their homes, and live solely on their ill-gotten gains. Lastly, there are the vagrant gypsy-like classes who roam over a great extent of country and commit depredations whenever opportunity offers. In Northern India they are the terror of the countryside. These different classes require, and receive under the new Act, different methods of treatment. The first step is to notify a tribe, gang, or class of persons as a criminal tribe. Then the members of the tribe may be required to register themselves, to allow their fingerprints to be taken (a new provision), and to report absence and changes of residence. If registration is insufficient, either the tribe may, as under the previous Act, be "interned" or settled down in a particular place of residence, or, under new provisions, their movements may be restricted within a specified area. Power is given to place in schools children belonging to these tribes or to apprentice them. In the course of the debates it was made clear that the measure was not intended to apply to *sanyasis*, members of secret societies, or political preachers who create unrest.

Ports.—The Indian Ports (Amendment) Act, 1911 (No. 4), amends the Indian Ports Act of 1908, and its object is to enable a code of regulations to be prepared for preventing the spread of disease by means of ships arriving at and departing from India.

Tramways.—The Indian Tramways (Amendment) Act, 1911 (No. 5), applies the Act of 1886 to mono-rails and extends its scope to tramways worked by electricity.

Customs.—The Indian Tariff (Amendment) Act, 1911 (No. 6), was part of the budget arrangements. It reduces by about one-third the duties on imported tobacco which had been imposed in the previous year and which, from the point of view of revenue, had, according to the Finance Minister, been unsatisfactory. He hoped that lower duties would produce larger revenues.

Paper Currency.—The Indian Paper Currency (Amendment) Act, 1911 (No. 7), amends s. 22 of the Act of 1910¹ by raising from twenty millions to forty millions of rupees the value of securities, not being securities of the Government of India, which may be held as securities for paper currency under that Act.

Army.—The Indian Army Act, 1911 (No. 8), is an important measure of consolidation, and takes the place of the Indian Articles of War of 1869 and of several amending Acts. The principal changes made by it in the Military Code were explained in Council by Sir Robert Scallon on January 24, 1911.

¹ See Journal, N.S. vol. xii. p. 367.

Births, Deaths, and Marriages Registration.—The Births, Deaths, and Marriages Registration (Amendment) Act, 1911 (No. 9), facilitates registration under the Act of 1886 by enabling notices to be given to the registrar in writing without personal attendance.

Seditious Meetings.—The Prevention of Seditious Meetings Act, 1907,¹ was limited to expire on November 1, 1907, but was, by an Act of 1910, continued for a further period of six months, in order that the new Governor-General (Lord Hardinge) might have a free hand in dealing with its subject. The Prevention of Seditious Meetings Act, 1911 (No. 10), re-enacts the Act of 1907 as a permanent measure, but with some important modifications. The new Act, like the Act which it supersedes, gives power to notify "proclaimed areas," and requires notice to be given, and authorises the prohibition, of public meetings in those areas. But some of the provisions of the old Act to which special objection had been taken have been removed. Thus the power to proclaim cannot now be exercised by the local government without the previous sanction of the Government of India; notice of a meeting is not required merely because the meeting is for the discussion of a political subject; and a meeting of more than twenty persons is no longer *presumed* to be a public meeting.

Universities.—The Indian Universities (Amendment) Act, 1911 (No. 11), enables Fellows of the Allahabad University to be elected partly by the Senate and partly by the registered graduates.

Factories.—The Bill which became law as the Indian Factories Act, 1911, is a measure of consolidation and amendment which has had a long history. The Indian Factories Act of 1881 was amended in Lord Lansdowne's time by an Act of 1891. A Bill to amend both these Acts was introduced in 1905, but its progress was interrupted by a commission of inquiry which sat in the cold weather of 1907-8. In July 1909 the Bill of 1905 was withdrawn and the measure which became law in 1911 was introduced in its place. The measure was debated at much length in its progress through the Legislative Council, but it would be impossible within the limits of this review to summarise its contents. The provision which excited strongest opposition was the limitation of adult labour in textile factories to twelve hours a day. The commission of inquiry had expressed themselves as "strongly opposed to direct limitation of adult working hours" and thought the limitation could be indirectly effected by restriction of the hours of "young persons," women and children. But the Government of India took a different view, and direct limitation of hours of adult labour has found its place in the Act of 1911.

Marriage.—The Indian Christian Marriage (Amendment) Act, 1911 (No. 13), provides for sending to England certificates of marriages solemnised in India under the Act of 1872.

Airships.—The Indian Airships Act, 1911 (No. 17), arms Indian

¹ See *Legislation of the Empire*, vol. iii. p. 26.

governments with the power to make rules (a) for licensing the manufacture, possession, use, sale, import and export of airships, and (b) giving powers of inspection, search, seizure and detention. The Government of India has power to prohibit in the public interest the import or export of airships, to cancel or suspend licences, and to acquire airships for the public service. And local governments may by order prohibit or regulate the passage of airships over particular areas. Airships had not made their appearance over India when the measure was introduced. If they have arrived since they will, presumably, have found a comprehensive code awaiting them.

Cowasjee Jehangir Baronetcy.—The Cowasjee Jehangir Baronetcy Act, 1911 (No. 19), is an estate Act, entailing property to support the title and dignity of a baronet conferred on a distinguished citizen of Bombay.

Two or three minor Acts do not need special notice.

2. MADRAS.

Acts passed—5.

Village Proprietors.—The Limited Proprietors Act, 1911 (No. 4), deals with a very technical subject. Under Acts passed in 1894, 1895, 1897 and 1900 provision is made for the registration of proprietors of certain village estates, and powers are conferred and duties and liabilities are imposed on proprietors so registered. This class did not include proprietors for limited purposes such as lessees and mortgagees and the Act of 1911 now includes them in the class.

Hackney Carriages.—The Madras Hackney Carriage Act, 1911 (No. 5), is a measure of the usual type for the regulation of hackney carriages. It takes the place of an Act of 1879.

The other Madras Acts do not call for special mention.

3. BOMBAY.

Acts passed—2.

Aden Port Trust.—The Aden Port Trust (Amendment) Act, 1911 (No. 1), provides, among other things, for payment of members of the Aden Port Trust under the Act of 1888.

Municipal Government.—The City of Bombay Municipal (Amendment) Act, 1911 (No. 2), gives effect to some suggestions made by the Municipal Corporation of Bombay for amendment of the Act of 1888 under which they work. To secure adequacy in the arrangements for the supply of water it provides for the appointment of a trained expert as hydraulic engineer. It exempts from assessment to local taxes portions of land and buildings exclusively occupied for public worship or charitable purposes. It exempts bicycles and tricycles from the tax on vehicles. It imposes on

householders the duty of numbering their houses. It gives the municipality power to insist on proper provision being made for escape from a building in case of fire. It enlarges the powers for dealing with buildings unfit for human habitation. In the interest of health it regulates the use of places for bakehouses, the making of cowdung cakes (largely used for fuel) and the importation of cattle, sheep, swine, etc., and flesh for purposes of food. A provision for dealing with the smoke nuisance was embodied in the Bill as introduced but was struck out in committee and left for separate legislation.

4. BENGAL.

Acts passed—5.

Local Government.—The Bengal Local Government Act, 1911 (No. 3), is consequential on the creation of an executive council for Bengal, and directs that, as a rule, the functions of the Lieutenant-Governor under the previously existing law are to be discharged by the Lieutenant-Governor in Council. It will be remembered that there is now a Governor in Council for Bengal.

Town Improvement.—The Calcutta Improvement Act, 1911 (No. 5), is a great housing and town planning Act for the city of Calcutta. It runs to 177 sections, besides schedules, and represents the labours of many years. It sets up a body of eleven trustees, and arms them with large powers for acquiring land, laying out streets, demolishing and building houses, and executing other municipal works. Funds for these purposes are to be raised partly by a duty on certain transfers of convertible property, by a terminal tax on passengers by rail or steam vessel, and by a customs duty on jute exported from Calcutta. The provisions of this important Act, which are to some extent framed on the lines of the corresponding Bombay Act, formed the subject of long and full discussions in the Legislative Council.

The other Bengal Acts are of minor importance.

5. EASTERN BENGAL AND ASSAM.

Act passed—1.

Court of Wards.—The Legislative Council for the province of Eastern Bengal and Assam, now remodelled, contented itself, in the last year of its existence, with making one small amendment in the Bengal Court of Wards Act.

6. UNITED PROVINCES.

Acts passed—2.

Pargana of Kaswar Raja.—The passing of the Pargana of Kaswar Raja Act, 1911 (No. 1), arose out of the recent recognition of the Raja of Benares as a ruling chief. In 1794 an agreement was entered into between the

British Government and the then Raja of Benares, by which that Government formally assumed the administration of the Benares province as a whole, but left special jurisdiction to the Raja in three "parganas" or districts, which were termed his family domains.¹ The Government of India recently reconsidered the arrangements of 1794, and determined to recognise the Raja of Benares as a ruling chief in two of these three parganas, but to withdraw his jurisdiction from the third, known as pargana Kaswar Raja or Gangapur, because the villages of this pargana are intermingled with those of the pargana Kaswar Sircar, which is under the ordinary jurisdiction of the United Provinces Government. It was found, however, that under the administration of the Raja there had grown up in the pargana of Kaswar Raja certain tenures and customs different from those in the adjoining districts under British administration, and the object of the Act now passed is to recognise and regulate these tenures and customs, and also to adjust the rights of the Raja of Benares.

Motor Vehicles.—The United Provinces Motor Vehicles Act, 1911 (No. 2), regulates the use of motor vehicles, and contains provisions of the kind now usual in similar Acts.

7. PUNJAB.

Acts passed—3.

Delhi Durbar.—The Delhi Durbar Police Act, 1911 (No. 2), made special and temporary provisions for the administration of the area occupied by or adjacent to the various camps to be held at the Delhi Coronation Durbar. The city of Delhi and the area to which this temporary Act applied have now been taken out of the Punjab and placed under a Chief Commissioner.

Municipal Government.—The Punjab Municipal Act, 1911 (No. 3), is the last of the series of Acts for constituting and regulating municipalities in the Punjab, and repeals and supersedes the previous Acts on the same subject. The original draft of the Act was prepared in 1905, and, though it has been revised in the light of the subsequent recommendations of the Decentralisation Commission, it does not appear to make any drastic alterations in the law.

8. BURMA.

Acts passed—3.

Police.—The Rangoon Police Amendment Act, 1911 (No. 1), gives the Commissioner of Police for Rangoon further powers for maintaining order. He may issue notifications prohibiting the carrying of bludgeons, loaded sticks, hunting-crops, clasp-knives of a specified size, or other offensive instruments, in public places, and in times of disorder the carrying, collection,

¹ See the article "Benares Estate" in the *Imperial Gazetteer of India*.

and preparation of stones or other missiles and instruments for casting them ; the exhibition of persons, corpses, figures, or effigies in any public place ; the public utterance of cries, singing of songs, playing of music ; and the delivery of harangues, or exhibition, dissemination of pictures, symbols, and so forth likely to lead to disturbance of the public peace.

Municipal Law.—The Burma Municipal Amendment Act, 1911 (No. 2), makes some miscellaneous amendments of the Act of 1898. Among other things it indemnifies municipal authorities and officers for things done in the execution of their duties, enlarges the powers for dealing with insalubrious buildings, and provides for inspection of places for illicit slaughter of animals.

9. REGULATIONS UNDER 33 VICT. C. 3.

Regulations made—5.

Indebted Landowners.—The Ajmer Talukdars Loan Regulation, 1911 (No. 2), provides for the grant of loans to indebted talukdars in Ajmer.

Forest.—The Hazara Forest Regulations, 1911 (No. 3), is a forest law on the usual lines applying to the greater part of the Hazara district, which forms the north-eastern tongue of the North-West Frontier Province.

House Tax.—The Coorg District Fund (Amendment) Regulation, 1911 (No. 5), gives power to impose a house tax upon non-agriculturists in rural areas in Coorg.

III. EASTERN COLONIES.

I. CEYLON.

[Contributed by LEWIS MAARTENSZ, ESQ., *Additional District Judge,*
Colombo, Ceylon.]

Ordinances passed—18.

Planters' Benevolent Fund.—The object of this Ordinance (No. 2) is to incorporate an association, established for the purpose of relieving necessitous persons of European birth belonging to the planting community of Ceylon, and their widows and children. The Ordinance provides for the constitution of a standing committee, and defines its rights and duties, and gives it power to appoint annually an executive committee to deal with cases of emergency which may arise between the meetings of the standing committee.

The Corporation is given power to make rules for the purpose of administering its funds, conducting business, and generally managing its affairs.

The existing funds and property are vested in the Corporation, and the usual powers are given to it to deal with the funds and property.

Wesleyan Methodist Missionary Society, Property of.—This Ordinance (No. 3) vests in the Wesleyan Methodist Missionary Trust Association all property held by or in trust for the Society, as the Society, not being a body corporate, has no status in law to protect the property or to enter into contracts with regard to the property.

Co-operative Credit Societies.—This Ordinance (No. 7) was passed to facilitate the organisation of co-operative credit societies among agriculturists, artisans, and persons of limited means.

Ten or more persons above the age of eighteen years residing in the same town or village or group of villages may register themselves as a Co-operative Credit Society.

On registration the society becomes a body corporate by the name under which it is registered, and is vested with the usual privileges.

A society so registered may receive deposits from members, and, under certain restrictions, may borrow money from non-members; it may give loans to members, and, with the consent of the registrar, to other societies.

Law Society.—The Incorporated Law Society created by this Ordinance (No. 8) is intended to protect the interests of that branch of the legal profession which is composed of proctors, and to enforce the observance of the rules of professional etiquette.

The Ordinance provides for a council consisting of nine members for the purpose of enrolling members for the formation of a society. On the enrolment of twenty members, including the members of the original council, the original council is to be succeeded by a new council of eleven members, of whom five are to be elected by the society and six nominated by the Attorney-General.

The society is given the right of perpetual succession, and the power to hold property and to appear in court in its corporate capacity.

Power is taken to make such by-laws as may be necessary for regulating its meetings, collecting subscriptions, and generally carrying out the objects for which it is founded.

Provision is made to enable the council to appear in support of or in opposition to applications to the Supreme Court for the admission, suspension, or disenrolment of proctors, and to deal with cases of professional misconduct.

Life Insurance.—The object of the Ordinance (No. 11) is to compel life insurance companies carrying on business in Ceylon to give security for the due fulfilment of their engagements with policy-holders. Provision is also made to have the financial condition of such life insurance companies examined by an actuary.

The Ordinance does not apply to life insurance companies which have made deposits in Great Britain under the provisions of the Assurance Companies Act, 1905.

The Governor in Executive Council may exempt any company wholly or partly from the provisions of the Ordinance.

Sea Shore.—The removal of sand, stone, and other substances from the sea and sea shore causes damage to the land bordering the sea, and the object of the Ordinance (No. 12) is to empower the Governor, with the advice of the Executive Council, to forbid the removal of sand, etc., from such parts of the sea shore as he may think expedient.

The repealed Ordinance 20 of 1865 is restricted to the sea shore adjoining or near any public road or thoroughfare, and intended only to protect roads or thoroughfares. The limited scope of the Ordinance rendered it ineffective, and necessitated the introduction of a new Ordinance.

Removal of Prisoners from Ceylon who have been sentenced to death and whose sentences have been commuted.—Prior to the passing of this Ordinance prisoners whose death sentence was commuted to imprisonment were not liable to removal from Ceylon.

Under the Ordinance (No. 13) prisoners whose death sentences have been commuted may be removed to undergo their sentences in the Andaman Islands.

2. HONG-KONG.

[Contributed by THE HON. MR. C. G. ALABASTER, *Acting Attorney-General*.]

Ordinances passed—65.

Lepers.—The Lepers Ordinance Amendment Ordinance (No. 2) prohibits the immigration of lepers, not being British subjects, and provides for their deportation.

Aviation and the Defences of the Colony.—The Defences (Sketching Prevention) Amendment Ordinance (No. 3) makes it an offence to trespass on fortifications and on naval and military premises, and also makes it unlawful for any person to make an ascent in a balloon, whether dirigible or otherwise, or in an aeroplane without having obtained the permission in writing of the Governor.

Dynamite Fishing.—The Fisheries (Dynamite) Ordinance (No. 4) prohibits the use of dynamite and other explosives for the purpose of catching fish in the colonial waters.

Offences against Railway Passengers.—The Criminal Law Amendment Ordinance (No. 7) introduces the provisions of ss. 32, 33, and 34 of 24 & 25 Vict. c. 100, and is made necessary by the opening of the Kowloon-Canton Railway which, when the line from Canton to Hankow is complete, will link the Kowloon shore of the Colony's harbour to Calais by way of the Trans-Siberia Railway.

Intoxicating Liquors.—The Liquors Consolidation Ordinance (No. 9) consolidates the law relating to intoxicating liquors in regard both to licensed premises and to duties on importation, duties which were imposed

for the first time in 1909 in consequence of the change of policy with regard to opium.

University.—The University Ordinance (No. 10) incorporates the newly established University of Hong-Kong, which owes its existence to the liberality and munificence of many firms and individuals of British, Chinese, and other nationalities, and particularly of the late Sir Hormusjee Nowrojee Mody. The University has been established (according to the preamble to the Ordinance) “for the promotion of Arts, Science, and Learning, the provision of higher education, the conferring of degrees, the development and formation of the character of students of all races, nationalities and creeds, and the maintenance of the good understanding with the neighbouring Empire of China.”

Flogging.—The Flogging Amendment Ordinance (No. 12) makes it possible for the Supreme Court to order flogging with the “cat” for offences against the provisions of s. 31 of the Larceny Ordinance, 1865 (corresponding with 24 & 25 Vict. c. 96, s. 43), and with the birch for certain forms of kidnapping.

Moneylenders.—The Moneylenders Ordinance (No. 16) is practically the same as the Imperial Act of 1900.

Electricity.—The Electricity Supply Ordinance (No. 18) makes regulations for securing the safety of the public. It applies to all companies supplying electricity within the Colony, and gives the Governor in Council power to rescind, modify or add to such regulations.

Statute Laws of the Colony.—The Statute Laws (New Revised Edition) Ordinance (No. 19) makes provision for the preparation of a newly Revised Edition of the Ordinances and Laws of the Colony which, it is expected, will be completed towards the end of the year 1912 or the beginning of the year 1913.

Milk.—The Sale of Food and Drugs Amendment Ordinance (No. 20) makes it compulsory for the vendors of condensed separated or skimmed milk to print in large and legible type in English and Chinese on all wrappers and labels the words “This is skimmed milk. Children under one year of age should not be fed on it.” The amending Ordinance also has provisions (based on 62 & 63 Vict. c. 51, s. 4) giving the Governor in Council power to make regulations as to the analysis of milk, cream, butter, and cheese.

Minimum Penalties.—The Penalties Amendment Ordinance (No. 30), which will not come into force until the issue of the Proclamation authorising (under No. 19) the use of the New Revised Edition of the Laws of the Colony, abolishes, with a few exceptions, all minimum penalties and makes the law as to penalties more uniform than it is at present with the law of England.

Interpretation and Common Forms.—The Interpretation Ordinance (No. 31), which also will not come into force until the issue of the New

Revised Edition, amends and codifies the law relating to the Interpretation of Terms and Common Forms used in Ordinances. It is based to a considerable extent on a Mauritius Ordinance and also on the Interpretation Act.

Stamp Management.—The Stamp Duties Management Ordinance (No. 35) follows very closely the provisions of 54 & 55 Vict. c. 38.

Civil Procedure.—The Code of Civil Procedure Amendment Ordinance (No. 36) makes many amendments to Ordinance No. 5 of 1901,¹ and introduces, with necessary modification, much of the English practice with regard to service out of jurisdiction.

Opium.—The Opium Amendment Ordinance (No. 39) places restrictions on the import of raw opium and prohibits the importation of loose opium.

Societies.—The Societies Ordinance (No. 47) is based on a similar Ordinance of the Straits Settlement, and provides for the registration and supervision of societies.

Junks.—The Merchant Shipping Amendment Ordinance (No. 48) is chiefly concerned with the regulation of junks and small boats which are a prominent feature of the harbour.

The Revolution in China.—The Peace Preservation Amendment Ordinance (No. 52) amended the principal Ordinance (No. 10 of 1886) by enabling the Courts and magistrates to punish with flogging persons guilty of crimes of violence during the continuance of a proclamation issued under the principal Ordinance. Such a proclamation was issued in December 1911 and was in force for some weeks. The powers given to the Courts and magistrates by the amending Ordinance had a salutary effect and did much to prevent the Colony from suffering from the lawlessness engendered by the Revolution. During the year the neighbouring province of Kwang Tung went over to the Revolutionaries, and two successive Tartar generals sent by the Manchu Government to the provincial capital, Canton, were assassinated. The Viceroy eventually escaped to the Colony for protection.

Chinese Partnerships.—The Chinese Partnerships Ordinance (No. 53) represents what is perhaps the most serious attempt that has ever been made in a British Colony to give legislative effect to a system of partnership liability unknown to British law. It was necessary because certain of the Chinese trading community were, when members of firms, in the habit of evading their liabilities to the firm's creditors in a way wholly at variance to their earned reputation for commercial honesty; and they made no secret of the fact that their reason for so doing was the, to their ideas, extreme unfairness of the partnership law of the Colony, which was the same as that in England. The principal underlying the Ordinance is that of voluntary registration. Those who register and make full disclosure of their identity and interest in the firms get their liability to the firms' creditors limited according to Chinese ideas of fairness. Those who prefer to conceal their identity under

¹ See *Legislation of the Empire*, vol. iii. p. 92.

long names (fanciful names) and do not register under the Ordinance get no such protection. It is impossible in this short review of the legislation of a year noted for the exceptional number of Ordinances passed to enter into a detailed description of the principles of Chinese partnership custom, recognised by the Ordinance, but stated shortly the liability of each partner who registers himself as a partner in a registered Chinese partnership is unlimited in respect of assets in his possession connected with the registered partnership, but his further liability is limited to such proportion of the debts and obligations of the registered partnership as his total interest in the registered partnership bears to the total interest of all the partners therein. The Ordinance differs essentially from the Limited Partnerships Act, 1907. The Chinese custom recognises no general partners liable for all the debts of the firm. On the contrary it recognises, and the Ordinance does also, a kind of partner who is not liable for the general debts of the firm although he participates in the profits, and is frequently the managing partner. Such persons are said to hold red shares. They subscribe no capital, and consequently receive no interest on their capital, but they participate in the profits (if any) after interest on capital has been paid. The ordinary partners are, as it were, preference shareholders and entitled to a fixed interest on their capital before any further distribution of profits is made.

Pounds.—The Pounds Ordinance (No 54) is based on 10 & 11 Vict. c. 89, s. 25, and makes provision for the impounding of stray animals.

Companies.—The Companies Ordinance (No. 58) amends and consolidates the company law of the Colony on the lines of 8 Ed. VII. c. 69.

Bank Notes.—The Mercantile Bank Note Issue Ordinance (No. 65) enables the Mercantile Bank of India, Ltd., to make, issue, reissue, and circulate bank notes in the Colony for a period of ten years, but, except in the case of temporary emergencies and subject to certain conditions, the total amount of their notes actually in circulation may not at any time exceed the paid-up capital of the company. Only two other banks in the Colony have the privilege of issuing bank notes therein.

OTHER ORDINANCES.

Nos. 1, 11 and 27. Widows' and Orphans' Pension Amendment.

No. 5. Police Force Amendment.

No. 6. Harbour of Refuge Amendment.

No. 8. Pawnbrokers Amendment.

No. 13. Correction of References.

No. 14. Summary Offences.

No. 15. Census Amendment.

Nos. 17 and 59. University Amendment.

No. 21. Trade Marks Amendment.

- No. 22. Patents Amendment.
- Nos. 23, 43 and 64. Foreign Offenders Detention Amendment.
- No. 24. Larceny Amendment.
- No. 25. Private Vehicles Amendment.
- Nos. 26 and 42. Appropriation.
- No. 28. Crown Lands Resumption Amendment.
- No. 29. Prison Amendment.
- No. 32. Post Office Amendment.
- No. 33. Probates Amendment.
- Nos. 34 and 55. Stamp Amendment.
- No. 37. Protection of Women and Girls Amendment.
- No. 38. Tung Wa Hospital Extension.
- No. 40. Crown Solicitors.
- No. 41. Arms and Ammunition Amendment.
- No. 44. Railways Amendment.
- No. 45. Defence Contribution Amendment.
- No. 46. Liquors Amendment.
- No. 49. General Revision.
- Nos. 50 and 62. Law Revision.
- Nos. 51 and 63. Law Amendment.
- No. 56. Stamp Duties Management Amendment.
- No. 57. Union Church Incorporation.
- No. 60. Public Health and Buildings Amendment.
- No. 61. Statute Laws (New Revised Edition) Amendment.

} Prepared under No. 19 in connection
 with the preparation of the New Revised
 Edition of the Laws of the Colony.

3. STRAITS SETTLEMENTS.

[Contributed by A. DE MELLO, Esq., *Assistant to the Attorney-General.*]

Ordinances passed—23.

Bankruptcy (No. 4).—This establishes the like reciprocity between the Bankruptcy Courts of the Colony and the Federated Malay States to that which exists under s. 118 of the Imperial Bankruptcy Act of 1883¹ between the various Bankruptcy Courts of the British Empire, *i.e.* by the mutual action of one Court in aid of another. The Court (of the Colony) is also given powers of issuing a warrant of arrest in cases where the debtor “is in hiding” after the issue of a bankruptcy notice or after presentation of a bankruptcy petition against him. Another amendment provides that, on the hearing of a bankrupt’s application for discharge, the official assignee may submit to the Court a report *inter alia* “as to the bankrupt’s conduct during the proceedings under his bankruptcy.”

Conveyancing and Law of Property (No. 17).—This amends s. 33 (2)

¹ 46 & 47 Vict. c. 52.

of the Conveyancing and Law of Property Ordinance of 1886, which in practice was found to be a source of great inconvenience, providing as it did that "where a sale or mortgage of land belonging to the estate of a deceased person is made . . . by the legal personal representatives of such person after the expiration of a period of six years from his death, the purchaser or mortgagee shall be bound to inquire as to the necessity or propriety of such sale or mortgage, and shall (notwithstanding any stipulation to the contrary) be entitled to require evidence that such sale or mortgage is necessary and proper." That provision was, of course, intended to prevent executors or administrators, taking land as a chattel real under s. 33 (1), from dealing with it to the prejudice of those who would take as beneficiaries under the will, or as the next of kin of the deceased. But as it did not specify what inquiries were to be made or from whom, or what evidence was to be obtained of having made them or of their result, and as no rule was given as to what constituted a "necessary" or "proper" mortgage or sale, the consequence often was to create an undeserved blot on the title which there was no proper way of removing, and yet it left it open to the vendor or mortgagor to make any specious excuse for the alienation, and there was no proper record of his reasons, nor any means of preserving such records, nor any penalty for misstatement. Under the sub-section (2) now substituted, such sale or mortgage made by the legal personal representatives after the expiry of six years from the owner's death will be valid if either (*a*) sanctioned by the Court, or (*b*) in virtue of an express or implied power or trust for the purpose contained in the will. This amendment will give the purchaser or mortgagee a greater certainty than was hitherto attainable as to the propriety of the sale or mortgage.

Crown Lands, Grants in Fee Simple.—No. 1 enables the Governor to issue grants in fee simple in the event of lands acquired on behalf of the War Department ceasing to be required for military purposes.

Deceased Wife's Sister's Marriage.—No. 13 gives the same validity to a marriage between a man and the sister of his deceased wife, when contracted in the Colony, as the Imperial Act of 1907¹ gives to a similar marriage contracted in the United Kingdom. The Ordinance is, in fact, based on the Imperial statute, but omits the provision in s. 4 of the latter as to the liability of a clergyman who contracts a marriage with his deceased wife's sister to ecclesiastical censures.

Labour (Nos. 7, 12, and 21).—The Tamil Immigration Fund Ordinance (No. 12) incorporates, on the lines of a similar enactment² of the Federated Malay States, the resolutions of the Malaya Planters' Association, in fixing the maximum assessment leviable on employers (other than the Government, which is exempted) of Tamil labour, empowering the Immigration Committee to borrow moneys when necessary, and prescribing that the fund formed by the payments of the employers may be disbursed towards pro-

¹ 7 Ed. VII. c. 47.

² No. 2 of 1911.

viding free passages for labourers and their families from India, the payment of interest on sums borrowed by the Committee, expenses in connection with quarantine, and the maintenance of a home for decrepit Tamil labourers. Of the other two Ordinances dealing with agricultural labour, the one, the Estate Labourers (Protection of Health) Ordinance (No. 7), is devoted more specially to providing the labourers with proper house accommodation, water supply, and sanitary and hospital arrangements; while the other, the Estate Labourers (Supervision of Labour) Ordinance (No. 21), provides for the prohibition of the employment of any class of labourer on agricultural estates or elsewhere where the supervision provided appears inadequate or ineffective to prevent their ill-usage or ill-treatment.

Labuan.—No. 3 constitutes the island of Labuan and its dependencies a distinct Settlement in lieu of forming part, as it did since 1907, of the Settlement of Singapore, and makes special provision, in view of the Merchant Shipping Ordinance (No. 10 of 1910), for the survey of steamers engaged in the Labuan “local trade,” and for the grant of certificates of competency to mariners. The provisions in chap. iii. of the Ordinance relative to the administration of justice practically re-enact the law as it stood before the passing of this Ordinance.¹

Liquors Revenue (No. 6).—S. 11 of the Liquors Ordinance, 1909, prohibited the removal of intoxicating dutiable liquors from the vessel in which they had been imported without certain permits; but, in practice, to avoid great inconvenience in the discharge of cargo by the vessels, all goods (including liquors) were landed *at the wharf* on arrival, irrespective of the production of a permit, and it was only when the consignees wished to remove the goods from the wharf that *landing permits* were required, which took the place of *removal permits* under the Ordinance. The amendment now introduced harmonises the law with the practice, sanctioning the latter, and making the duty payable before removal from the vessel or railway train, or from the bonded warehouse, as the case may be. The opportunity was also taken to confer jurisdiction, but with a restriction of the power of imprisonment to twelve months only, on *Police Courts* in cases under the Ordinance, as experience has shown the practical inconvenience of the jurisdiction being confined to *District Courts*, instances having occurred of a District Judge having to travel long distances to try a single case involving, on conviction, the imposition of a small fine. There are other minor changes effected.

Prisons.—No. 20 prescribes the registration and full record of vagrants, in addition to that of convicts and of persons ordered to be banished from the Colony.

Public Officers' Guarantee Fund.—No. 2 establishes a fund, as under the Ordinance of 1900, consisting of the contributions of public officers required to furnish security for the due and faithful discharge of their duties. The fund is administered by a board of three directors, being public officers

¹ See Journal, N.S. vol. xi. p. 364.

nominated by the Governor, any two of whom may form a quorum. This Ordinance differs from that of 1900, which it repeals, in imposing no entrance fee for joining the fund, in reducing the annual contribution from 1 per cent. to $\frac{1}{2}$ per cent., in removing the disability of officers to sue in respect of the fund, as also the provision as to quinquennial adjustments.

Societies.—No. 22 establishes, under certain circumstances, a presumption of membership of a Triad Society, and empowers the Governor in Council to dissolve a society not only when it is being used for manifestly unlawful purposes or to the danger of the peace and good order of the Colony, but also when its objects appear incompatible with the purposes and rules of the Society as entered in the Register of Societies.

Traction Engines and Motor Cars.—No. 19 provides, in view of the invention of the motor car and its increasing use in the Colony, a more adequate means than was hitherto afforded by the Locomotives Ordinance (No. 8 of 1871) of regulating, in the interests of public safety and convenience, the use of locomotives and other carriages propelled by other than animal power.

Volunteers (No. 9).—This amending Ordinance provides for the discipline of individual members of a force raised in the United Kingdom, India, the Federated Malay States, or another Colony, when attached or doing duty with any portion of the Volunteer forces of the Straits Settlements, by subjecting them to the same laws and regulations as the corps to which they are attached is itself subject.

Miscellaneous.—Other Ordinances passed during the year deal with notice of change of title to property vested in the Mohammedan and Hindu Endowments Board (No. 8), with the number of troops to be employed in military manoeuvres and the notice thereof to be given to the Colonial Secretary (No. 10), with the granting of trading facilities within the Colony to the Deutsch-Asiatische Bank (No. 11), with the incorporation of the titular Anglican Bishop of Singapore, and with the preparation of new survey maps accurately representing the true boundaries of holdings of land (No. 18).

4. FEDERATED MALAY STATES.

[*Contributed by* T. BATY, Esq., D.C.L., LL.D.]

Enactments passed—17.

Government (No. 1).—The absorption of these so-called foreign States in the British Empire is marked by the change of the title of the Resident-General to that of "Chief Secretary to Government."

Immigration (No. 2).—This consolidates the law of Tamil immigration for the various united States. Incidentally it reverts to the definition in force prior to 1910, when the age of a "labourer" was lowered from fourteen to ten years.

Copyright in News (No. 5).—Printed and published news received by cable from abroad is not to be printed or published by any one else for forty-eight hours without the consent in writing of the original publisher, provided that sixty hours have not elapsed since the receipt of the telegram. Even comment upon, or reference to, the matter is improper, and amounts to publication. How far it would be "publication" to retail the news orally may be dubious. S. 1 speaks of printing or publishing. S. 2, imposing penalties, imposes them only on the person who "prints *and* publishes." He is liable to \$100 fine, increasing to \$200. Telegrams must be headed "copyright telegram"—but we do not know what happens if they are not. During forty-eight hours no one is to repeat the news by electric telegraph to stations abroad. Certain rules are added as to presumptions of publication and receipt. Publications made by the Government printer and reports of proceedings in the Federal Council are not within the enactment.

Marriage (No. 8).—This provides for the registration of marriages to which a Christian or a Mohammedan is not a party. Registration is entirely voluntary, and has no effect on the validity of a marriage.

Drugs (No. 10).—This consolidates the State legislations, which in 1907 (Pahang, 1908) followed the Straits legislation of 1907. Patent or proprietary articles containing no more than 1 per cent. of the scheduled drugs are *ipso facto* exempted from its operation. "Syringe" includes "needle." "Official dose" is defined, as we ventured to suggest it ought to be.¹ The provisions are somewhat strengthened by striking at attempts, abetments, and permissions. Here again our suggestion that any medical practitioner would, under the old enactment (s. 5 (6)), be liable to conviction as a person who uses a house for the administration of the scheduled drugs, is acted upon, and a proper saving inserted. The further proper exemption is made in the case of syringes, that it is not penal to possess them under medical direction. Rewards to informers are abolished. The powers of search are assimilated to those in respect of poisons and customs. The provisions enabling arrest without warrant appear to have disappeared; but a new clause throws on the accused the onus of proving his innocence if scheduled articles are found in his possession.

Poisons (No. 15).—This is mainly a consolidating Act, and places the grant of licences in Federal hands. Power to take samples and to effect searches is given. Important alterations are that the possession of poisons, except in bulk or in a vessel labelled with its name and a poison-mark, is made penal. Manufacturers, however, cannot label every vat and test-tube, and the Act ought to be amended for their protection. Poisons are also to be kept for sale or dispensing only in distinctive receptacles or under separate lock and key. On actual sale, poison must be in a labelled bottle or vessel distinguishable by touch from ordinary ones. The provision against sale to an unknown person disappears, and so do the rules as to preserving

¹ Journal N.S. vol. ix. p. 395.

records of sales. These will probably be reintroduced as terms on which licences will be granted.

Labourers (No. 16)—This provides that if supervision is inadequate to secure against ill-treatment the Federal and local Residents in concert may prohibit the working of an estate, as also if it is unfit for the employment of labourers. Penalty \$2,000, plus \$200 per diem. No appeal to the Courts is permitted.

Other enactments relate to *Finance, Foxes in Urban Districts, Mining, and Perak Customary Tenure*. Nos. 9, 11, 13, 14 are missing from the series supplied to the writer.

5. MAURITIUS.

[*Contributed by the Procureur-General, A. HERCHENRODER, ESQ.*]

Ordinances passed—17.

The following are the most important :

Police.—The Police Constitution (Amendment) Ordinance, 1911 (No. 2), leaves the numbers, pay, and organisation of the force in the hands of the Government and the Secretary of State for the Colonies.

Evidence.—The District and Stipendiary Courts (Amendment) Ordinance, 1911 (No. 3), gives a discretionary power to district and stipendiary magistrates, in civil causes or matters, to take evidence out of their Courts in cases where a party or a witness cannot attend through a serious and lawful impediment in the opinion of the Court.

White Phosphorus Prohibition.—The White Phosphorus Matches Prohibition Ordinance, 1911 (No. 5), carries out the provisions of the International Convention for the prohibition of the use of white phosphorus in the manufacture of matches, and is adapted from the Gibraltar Ordinance No. 2 of 1910.¹

Diseases of Plants.—The Plants Diseases Prevention Ordinance, 1911 (No. 8), which is borrowed from a Cyprus Ordinance, was introduced with a view of arming the Executive with full powers to take effective action towards stamping out a pest in the shape of a probably new imported insect which was threatening the sugar industry. The duration of the Ordinance was limited to one year.

Hurricane Loan.—The Hurricane Loan Administration (Amendment) Ordinance, 1911 (No. 9), amends the Hurricane Loan Administration Ordinances Nos. 13 of 1894 and 14 of 1907 with the object of increasing by Rs. 5,000 the annual contribution of the Government to the payment of interest and sinking fund, thus bringing such contribution to Rs. 75,000 a year.

Public Contracts.—The Public Contracts (Stamp and Registration)

¹ See Journal, vol. xii. p. 513.

Ordinance, 1911 (No. 10), settles troublesome and moot questions in respect of the stamping and registration of Government contracts under the Stamp and Registration Laws by enacting that there shall be no fixed period for the registration of such contracts, and by exempting the same from stamp duties.

Surveyors.—The Surveyors (Amendment) Ordinance, 1911 (No. 11), compels surveyors to deposit at one and the same time, and within the statutory delays for registration, the duplicate minutes of every memorandum of survey at the Registration Office. The Ordinance further provides for the suspension and dismissal of any surveyor failing to cause a memorandum of survey made by him to be registered with the statutory delay.

Prædial Larceny.—The Farmers' Protection Ordinance, 1911 (No. 13), is the outcome of the recommendations of a committee appointed to consider the question of the protection to be afforded to small cultivators and farmers against prædial larcenies, and provides for the registration of farmers within the meaning of the Ordinance, and for the better control of persons selling, hawking, or being found in possession of vegetables, animals, and poultry.

Post Office.—The Post Office (Amendment) Ordinance, 1911 (No. 14) regulates the working of inland and foreign parcel post and of money and postal order business on the lines of English Statutes.

Explosives.—The Explosives (Amendment) Ordinance, 1911 (No. 15), adapts to the existing legislation (Ordinance No. 30 of 1884-5) provisions borrowed from the Trinidad and Tobago Explosives Ordinance No. 15 of 1907¹ in respect of the search for, seizure, detention, and forfeiture of explosive substances.

The Explosive Substances (Offences) Ordinance, 1911 (No. 16), strengthens the penal law of the Colony by adapting to local circumstances some of the repressive provisions adopted at home in respect of the criminal use of explosives (46 & 47 Vict. c. 3 and 24 & 25 Vict. c. 97, ss. 9 and 10).

6. SEYCHELLES.

[*Contributed by A. WILLIAMSON, ESQ.*]

Ordinances passed—12.

The number of Ordinances passed by the Legislative Council of Seychelles during 1911 shows a diminution upon that of the previous year, and of the number only two, viz. Nos. 7 and 8, are of special importance, the remainder being amending or re-enacting Ordinances, and of minor importance.

Dangerous Goods.—Ordinance No. 1 of 1911 regulates the importation and storage of dangerous goods. The Law on this matter was previously embodied in Ordinances No. 6 of 1896, No. 9 of 1907, and No. 9 of 1908.

¹ See *Legislation of the Empire*, vol. iii, p. 407.

By an oversight on the part of the draughtsman the two latter Ordinances, which both related to the conditions under which regulations under the former might be issued, were found to be so conflicting that the Courts would not give effect to the regulations in force up to 1907, and that new regulations of a satisfactory kind could not be validly proclaimed under the existing law. The new Ordinance provides for legislation with reference to the importation and storage of dangerous goods entirely by means of regulations made by the Executive Council. Its provisions merely indicate in general terms the lines upon which these regulations may be framed, and this form of legislation is undoubtedly the best in cases such as this, when conditions may change materially and frequently, and may require immediate and suitable alterations of the law to meet them.

Education.—Ordinance No. 2 of 1911 amends the English Scholarship Ordinance of 1910. The Ordinance of 1910 provided for a scholarship being awarded annually to the laureate of King's College—a school run under Government auspices. It was found, however, that the material available at the school would not justify an annual scholarship being given, and the new Ordinance provides for the scholarship being granted in alternate years instead of annually, reserving power to the Executive Council to revert to the annual arrangement should circumstances warrant it.

Land Cultivation.—Ordinance No. 3 of 1911 amends the law relating to *moitié* system contracts. Under the previous law, any two persons could enter into an agreement for the purpose of doing any particular work on a half-share basis by taking out a licence and complying with certain other formalities. Under this law, the power of making such contracts is limited to workmen, who are defined as all servants other than domestic servants, or those under contract under the Labour Laws, artisans other than those required to take out licences under the Licence Laws, and owners or holders of not more than two acres of land. It limits also the contract to the cultivation of land by sharing the produce, or to the cultivation of a portion of land by the workman for himself and a portion for the owner, or to the cultivation of a portion of land by the workman for himself and working for the owner without wages. All contracts must be signed before a magistrate and registered with the Crown Prosecutor and Inspector of Police.

Civil Status.—Ordinance No. 4 of 1911 amends the Civil Status Ordinance of 1893 by enabling the Governor in certain circumstances to authorise the celebration of a marriage after one publication of the intended marriage instead of two, and also provides for compulsory interments not sooner than twenty-four hours and not later than forty-eight hours after death.

Public Bodies.—Ordinance No. 5 of 1911 enables the Governor to make interim appointments in the case of vacancies occurring in public bodies whose members are appointed annually.

Succession.—Ordinance No. 7 of 1911 introduces a very important modification into the French law of succession by enabling a person to effect

an assurance on his own life in favour of his wife, children, and grandchildren in such shares as he may deem fit. The amount of the policy does not form part of the estate of the assured, but belongs to the beneficiaries, unless it be proved that it was effected with intent to defraud creditors. By means of this Ordinance, the very restricted powers enjoyed by a parent under French law of disposing of his moveable estate amongst his family are largely increased, and the extent to which it may be taken advantage of will no doubt determine the policy of still further increasing those powers and of gradually assimilating local to English law.

Criminal Procedure.—Ordinance No. 8 of 1911 regulates criminal procedure. It is, to some extent, an adoption of English criminal procedure, and provides *inter alia* for the joinder of counts for larceny and receiving, for the conviction for larceny of persons charged with embezzlement and *vice versa*, for an information charging with more than one offence arising from the same set of facts, for offences being charged in the alternative, for the amendment of an information at any time before sentence, and for an information charging with three offences of the same kind.

Maintenance.—Ordinance No. 9 of 1911 relates to the making of summary orders for the maintenance of wives and children, but has been repealed and re-enacted with important modifications by Ordinance No. 1 of 1912.

Conveyancing.—Ordinance No. 10 of 1911 amends Arrête No. 49 by enacting that every deed drawn up by a notary relating to land or other property situated outside the Colony may be delivered to the party in original provided that a true copy of it be kept by the notary.

Bankruptcy.—Ordinance No. 11 of 1911 amends the law relating to the appointment of the Official Assignee in Bankruptcy by giving him a fixed remuneration for his services instead of remunerating him by fees.

Ordinances No. 6 and 12 of 1911 are Appropriation Ordinances.

7. WEI-HAI-WEI.

[Contributed by ALBERT GRAY, ESQ, K.C.]

Ordinances passed—3.

Advertisements.—No person may exhibit any advertisement without the permission of the Commissioner, and such permission may be refused where the advertisement appears to him to be prejudicial to good order, or would disfigure the natural beauty of a landscape (No. 1).

Public Trustee.—The Public Trustee of the United Kingdom is not required to give bonds or securities (No. 2).

Cinematographs.—Before a cinematograph show is opened, a description of every scene to be presented must be furnished to the Secretary to Government and a permit obtained (No. 3).

IV. AUSTRALASIA.

1. COMMONWEALTH OF AUSTRALIA.

[Contributed by R. R. GARRAN, ESQ., C.M.G., *Secretary to the Attorney-General's Department and Parliamentary Draftsman.*]

Public Acts passed—29.

General.—As has been the case in recent years, many of the important Acts previously passed by the Commonwealth Parliament were extensively amended during the 1911 session. The chief Acts amended were: Australian Notes Act, Commonwealth Conciliation and Arbitration Act, Commonwealth Electoral Act, Commonwealth Public Service Act, Customs Tariff, Defence Act, Land Tax Assessment Act, Naval Defence Act, and Post and Telegraph Rates Act.

Financial.—The Australian Notes Act of 1911 (No. 21) removes the restriction in the principal Act,¹ under which the Treasurer was bound to keep, as regards all notes in excess of £7,000,000, a gold reserve equal in value to the amount of that excess.

The gold reserve now required is not less than one-fourth of the amount of the notes issued.

The Commonwealth Bank Act (No. 18) establishes the Commonwealth Bank of Australia, which is empowered to carry on a general banking business, and also a savings bank business, but the Bank is prohibited from issuing bills or notes.

The management of the Bank is vested in the Governor to be appointed by the Governor-General, and there is in addition to be a Deputy-Governor.

Both these officials are appointed for seven years and are eligible for re-appointment.

The capital of the Bank is fixed at £1,000,000, to be raised by the sale and the issue of debentures.

The profits of the Bank are to be dealt with as follows: (a) one-half is to be credited to the Bank Reserve Fund, and (b) the other half is to be credited to the Redemption Fund.

The Bank Reserve Fund is available for the payment of any liabilities of the Bank, while the Redemption Fund is available in repayment of any money advanced to the Bank by the Treasurer and in redemption of the debentures or stock of the Bank; but if the fund exceeds the amount of debentures or stock in circulation, the excess may be used for the purposes of the redemption of any Commonwealth debts or State debts taken over by the Commonwealth.

The Commonwealth is responsible for the payment of all moneys due

¹ No. 11 of 1910, Journal, N.S. vol. x, p. 388.

by the Bank, but this provision does not authorise any creditor of the Bank to sue the Commonwealth in respect of the debts.

The Act contains the usual provisions dealing with the savings bank business of the Bank, as well as the usual provisions dealing with the issue of debentures, and the punishment of offences such as forging debentures and other securities, falsifying books, and misappropriating money or any property of the Bank.

The Commonwealth Inscribed Stock Act (No. 21) provides for creation of Commonwealth Inscribed Stock.

The Act does not present any specially novel features.

For the redemption of the stock created, the Treasurer is, on the last days of March and September in each year, to pay out of the Consolidated Reserve Fund into the Stock Redemption Fund such sum as is fixed by any order directing the sale of any stock, being not less than 10s. per cent. on such stock.

Industrial.—The Conciliation and Arbitration Act of 1911 (No. 6) makes some very important amendments in the principal Act.

The main amendment is to the definition of "industry."

The High Court had decided in the case of the *Federated Association of Australasia v. Broken Hill Proprietary Company, Ltd.*,¹ that an industry contemplated by the Act, as it then stood, means an enterprise in which both employers and employees are associated, and does not include the vocation of persons doing a particular kind of work in connection with several different classes of such enterprises, e.g. an association of land engine-drivers and firemen whose members were employed indiscriminately in mines, in timber-yards, in tanneries, in soap and candle works, etc., was not entitled to registration under the Act.

In order to overcome this decision the definition of "industry" was amended to read as follows :

Industry includes :

- (a) any business, trade, manufacture, undertaking, or calling of employers on land or water ;
- (b) any calling, service, employment, handicraft, or industrial occupation or avocation of employees on land or water ; and
- (c) a branch of an industry and a group of industries.

The definition of "industrial dispute" was also amended by omitting the words which limited it to a dispute arising between an employer or an organisation of employers on the one part and an organisation of employees on the other part.

Several other minor and consequential amendments of the principal Act, consequent on the above decision, or found necessary for the better administration of the Act, were also made.

The power of the President with regard to compulsory conferences was also extended by empowering him to summon any person, whether connected with the dispute or not, whose presence at the conference the President thinks is likely to conduce to the prevention or settlement of the dispute.

The Act also extends the section dealing with the cancellation of the registration of an organisation by allowing the Court on the application of any organisation or person interested or of the Registrar to cancel the registration in certain events. The Governor-General is empowered, on the recommendation of the President, to declare that the Act applies to any association whether registrable or not.

Public Service.—The Public Service Act of 1911 (No. 26) amends the principal Act mainly with regard to furlough and appointments to the Clerical Division.

The amendment regarding furlough empowers the Governor-General, on the recommendation of the Public Service Commissioner, to grant leave of absence for six months on full pay, or twelve months on half pay, to an officer who has served twenty years.

Where an officer who was entitled to such leave does not take it, but retires from the service, the Governor-General may, on the recommendation of the Commissioner, grant him six months' pay; and where the officer dies without taking such leave, the Governor-General may, on the recommendation of the Commissioner, pay to the officer's dependants a sum equivalent to six months' salary of the officer.

One of the most important Acts passed during the 1911 session was the Arbitration (Public Service) Act (No. 11).

This Act empowers an organisation of employees in the Commonwealth public service to submit their grievances to the Arbitration Court.

Employees in the public service of the Commonwealth, or in any branch thereof, are deemed to be employees in an industry within the meaning of the Commonwealth Conciliation and Arbitration Act, 1904-11, and an association of such members may accordingly register under that Act; and may do so even if its membership is less than one hundred, if it includes at least three-fifths of all the persons who are employees in that particular "industry."

The Court is given full power to deal with any complaint which may be submitted, and the Public Service Commissioner and the permanent heads and chief officers of the departments are to comply with the terms of the awards given.

Every award must be expressed not to come into operation until a future date, not earlier than after the expiration of thirty days after the award has been laid before both Houses of Parliament.

The President is to forward the award to the Prime Minister, who is to lay it before both Houses of Parliament within fourteen days of its receipt,

if Parliament is then sitting, and if it is not sitting, then within fourteen days after the next meeting of Parliament, and the President also must forward a certified copy of the award to the Attorney-General.

Where the award is inconsistent with the laws of the Commonwealth and the regulations made thereunder, the President must, when forwarding the award to the Prime Minister, send to the Prime Minister and Attorney-General a statement of the laws and regulations with which, in his opinion, it is or may be inconsistent.

The Prime Minister within the specified time is to lay the award and statement before both Houses of Parliament, together with any opinion the Attorney-General may give on the award.

If, within thirty days of the award and statement or opinion being laid before both Houses of Parliament, either House pass a resolution disapproving the award, the award shall not come into operation.

If no such action is taken, the award comes into operation at the expiration of the thirty days or such later period as is specified in the award.

Commerce.—The Customs Tariff, 1911 (No. 19), was passed to rectify a number of anomalies which were found to exist in the tariff.

The Seamen's Compensation Act of 1911 (No. 13) is practically a reprint of the Seamen's Compensation Act of 1909,¹ except in one important particular. The Act of 1909 had been declared invalid by the High Court in the case of the *Owners of S.S. Kalibia v. Wilson*,² on the ground that the Act dealt with intra-State trade, which by the Constitution is reserved to the States, and the valid and invalid parts of the Act were so interwoven that the whole Act was bad.

This result was brought about by the section which dealt with the application of the Act being too wide.

In the Act of 1911 the application section was altered, and the Act now only applies to seamen engaged on any of the following ships :

- (a) ships in the service of the Commonwealth, other than the naval or military service ;
- (b) ships trading with Australia, or engaging in any occupation in Australian waters, and being in the territorial waters of any territory which is part of the Commonwealth ; and
- (c) ships engaged in trade and commerce with other countries or among the States.

In the case of ships not registered in Australia, the Act shall, as regards paragraphs (b) and (c) above, only apply in relation to seamen shipped under articles entered into in Australia, and then only while the ships are subject to the law of the Commonwealth.

The Lighthouses Act (No. 14) makes provision for the acquisition by the Commonwealth from a State or person of any existing lighthouse or marine mark, and for the erection of additional lighthouses or marine marks.

¹ No. 29 of 1909.

² 1 C.L.R. 689.

The Act also makes provision for the levying, collection, and enforcement of light dues, and also contains provisions with reference to the injuring of lighthouses and marine marks and other similar offences.

Electoral.—The Commonwealth Electoral Act of 1911 (No. 17) amends extensively the principal Act. The most important amendments deal with (a) compulsory enrolment, (b) postal and absent voting, (c) filing of returns of expenses by political organisations and newspapers, and (d) signature of electoral articles, reports, etc.

(a) The amending Act provides for a system of compulsory enrolment of all persons entitled to be on an electoral roll, and also for the compulsory notification of the transfer of an elector from one subdivision to another subdivision.

(b) The Act abolishes the privilege of postal voting, and in its place substitutes an extended system of absent voting.

An elector who has reason to believe that he will not on polling day be within any electoral division may be permitted to vote at any time after the issue of the writ and before polling day, if he attends before an Electoral Registrar.

On polling day, an elector shall be entitled to vote at the polling place for which he is enrolled or at any prescribed polling place for his subdivision, or at any other polling place in the Commonwealth in accordance with the regulations relating to absent voting.

(c) The amending Act provides for the filing of returns of expenses by political organisations and others.

Every trades union, registered or unregistered, organisation, association, league or body of persons which has, or person who has, in connection with any election expended any money or incurred any expense on behalf of any candidate or political party, or in printing, publishing, or issuing electoral advertisements or notices, or procuring the insertion in any newspaper of any advertisement, article, or report dealing with an election, shall file with the Electoral Department a return of the money expended or expense incurred.

For contravention of this section a person is liable to a penalty of £50.

The Act also requires the proprietor or publisher of a newspaper to file with the Electoral Department a return setting out the amount of electoral matter in connection with an election inserted in his newspaper, the space occupied, the amount payable in respect thereof, and the names and addresses of the trades unions, organisations, associations and other bodies or the persons authorising the insertion of the matter.

The penalty for a breach of this section is £100.

The returns both by organisations and by newspaper proprietors are open to public inspection.

(d) By this Act, on and after the date of the issue and before the return of the writ, every article, report, letter, or other matter commenting upon any candidate, or political party, printed and published in any newspaper, circular,

pamphlet, or "dodger," must be signed by the author or authors, giving his or their true name and address or names and addresses.

Any newspaper editor or proprietor who permits, in his newspaper, the publication of any unsigned article, report, or letter as above, is liable to a penalty of £50.

The Act also requires the proprietor of every newspaper to print the word "advertisement" as a headline to each article or paragraph containing electoral matter for the insertion of which he is paid or promised reward or compensation.

Besides these important amendments there are a number of other amendments to the principal Act. The limitation contained in the principal Act by which in a disputed election case the amount of costs to be paid by any party was not to exceed £100 is abolished.

The provisions dealing with the witnessing of electoral papers is made more stringent by requiring the witness to actually see the person write his or her name.

The majority of the remainder of the amendments were inserted in order to facilitate the efficient administration of the Act, or to overcome minor difficulties which had arisen in the administration of the Act.

Defence.—The amendments made by the Defence Act of 1911 (No. 15), relate to the portion of the Act dealing with universal training.

The Act reduces the number of hours of training required for the senior cadets, and also specifies the duration of a whole-day drill to be not less than four hours, a half-day drill not less than two hours, and a night drill not less than one hour.

Provision is also made for the case of cadets who live more than two miles from the place appointed for training, and attendance for a less number of hours than prescribed may be allowed to count for the full statutory number, and power may be given to certain officers to grant leave of absence when weather conditions are unfavourable and they may require in lieu thereof an equivalent attendance.

The provision in the principal Act by which no penalty for evasion of service could be recovered until the cadet attained the age of eighteen years is abolished.

The Naval Defence Act of 1911 (No. 16) deals chiefly with the co-operation of the different Dominions forces and with the constitution of courts-martial.

Whenever the Commonwealth naval forces are acting with the King's naval forces or any Dominion naval forces, the forces acting together are, subject to any order of the Governor-General, to be under the command of the senior naval officer present, and subject to his orders all officers in the force are to have, as regards command and discipline in relation to the Commonwealth forces, the same powers and authority as if they were officers of the Commonwealth forces.

Officers of the King's naval forces or of the Dominion naval forces are eligible to sit on courts-martial under the Act.

When the Commonwealth naval forces are acting with the King's or a Dominion naval force, the naval officer in command is empowered to convene courts-martial and appoint officers thereto for the trial of members of the Commonwealth naval forces, but a sentence of death passed upon a member of the Commonwealth naval forces must not be carried into effect until confirmed by the Governor-General.

Postal.—The Post and Telegraph Rates Act of 1911 (No. 8) distinguishes between books, magazines, and catalogues, and provides for a preference rate to these articles when printed in Australia.

By the Pacific Cable Act (No. 25), the Commonwealth, as one of the parties on the Pacific Cable Board, consents to the laying of a cable from New Zealand to Australia as part of the Pacific Cable.

The Purchase Telephone Lines Acquisition Act (No. 9) empowers the Postmaster-General to acquire certain private telephone lines in existence in New South Wales.

Miscellaneous.—Land Tax Assessment Act, 1911 (No. 12). The amendments made by this Act were made chiefly to facilitate administration.

The benefit granted to tenants for life under s. 25 of the Act is confined to legal tenants for life, and the value of the estate is calculated on the basis of the rent obtained.

The section dealing with the benefits conferred on trustees and joint owners under a certain class of wills and settlements is amended to more plainly set forth the intention of Parliament.

Owing to the difficulty of assessing mutual life insurance societies under the original Act and the small amount of tax received, the Act provides that these societies shall be exempt from taxation. As regards societies having shareholders, the society is exempt as regards the assurances of Australian policy-holders.

In consequence of an adverse decision of the High Court, s. 43, dealing with deductions to prevent double taxation, is amended to meet the original intention of Parliament on this point.

The Commissioner is given power to remit in any particular case any additional tax imposed for default, but he must furnish the Treasurer, for presentation to Parliament, with a report setting forth the remissions and the reasons for the same.

The Act also prohibits an inferior Court from hearing appeals unless presided over by a judge authorised so to do by the Governor-General.

The Kalgoorlie to Port Augusta Railway Act, 1911 (No. 7), provides for the construction of a transcontinental railway from Kalgoorlie in Western Australia to Port Augusta in South Australia, upon these two States granting the necessary land. This railway connects Western Australia with the eastern States.

The gauge of the railway is fixed at 4 ft. 8½ in.

The Act contains most of the clauses common to railway construction Acts.

The Statutory Declarations Act, 1911 (No. 3), provides for the appointment of Commissioners of Declarations, mainly for the purposes of the administration of the different Commonwealth Departments.

The Petherick Collection Act, 1911 (No. 4), authorises the acquisition by the Commonwealth of the Petherick Collection of books, pamphlets, plates, maps, and manuscripts illustrative of the geography and history of the Australian States, New Zealand, and other island groups of the South Seas.

2. NEW SOUTH WALES.

[*Contributed by* NORMAN BENTWICH, ESQ.]

Acts passed—Public, 26 ; Private, 4.

The number of Public Acts of any general interest passed by the New South Wales Legislature during 1911 is exceptionally small, the single important statute being one to amend the Parliamentary Elections Act. The Income Tax Act is notable as introducing new principles of graduation.

Revenue Acts.—Nos. 7, 8, 19, 25 and 26.

Old Age Pensions Repeal (No. 2).—This Act simply repeals the Old Age Pensions Act, 1900, and the Invalidity and Accidents Pensions Act, 1907.

Pharmacy Amendment.—No. 3 alters the character of the preliminary examination for chemists.

Public Works (Leasing).—No. 4 authorises the leasing for any term not exceeding fifty years, in lieu of selling superfluous land not required for public purposes. Rents accruing in respect of such leases shall be paid to the Consolidated Revenue Fund.

Special Deposit Accounts (No. 5).—This Act empowers the Colonial Treasurer to open special deposit accounts in the Treasury into which shall be paid (a) the proceeds of the sale of produce, stock, etc., by any Government farm, agricultural college, or notified institution, and (b) all moneys received in connection with accommodation houses for tourists carried on by the Government, and such Government undertakings in connection with tourist resorts as may be specified.

Parliamentary Elections Amendment (No. 9).—This statute amends the Acts of 1902, 1906 and 1910, and contains some striking provisions for absent voters. The qualification for voters is changed to residence for six months in the Commonwealth of Australia, plus three months in New South Wales, in place of one year, and one month in the special electoral district in place of three months as hitherto required.

An occupier of a dwelling-house may be required by a police officer

to fill in a schedule of persons living in his house for the purpose of making up the electoral list, under a penalty of £20.

S. 10 provides that the day appointed for polling-day shall be a public holiday as from noon. Every employer must, at the request of an elector employed by him, allow such elector to go at a reasonable time to the polling-booth and record his vote, under a penalty not exceeding £50, provided that the provision shall not apply when the elector has a half-holiday on the day.

Ss. 15-21 deal with voting outside the electoral district in which an elector is enrolled. The absent elector may vote at any polling-place in any other electorate on (a) stating his name and place of residence in the district for which he is qualified; (b) making a special declaration addressed to the returning officer of his district, which must be signed in his own hand and attested by the returning officer when he votes. The absent voters' ballot papers are sent to the proper returning officer for the district by post, and the returning officer who has received the votes must inform the other by telegraph of the number of envelopes he has forwarded. The ballot papers which arrive duly made out and attested are reserved for further scrutiny, and the decision of the returning officer as to the allowance of the vote shall be final, subject only to review by the Election Modifications Committee. The returning officer must keep separately the envelopes from which absent voters' ballot papers have been taken, or containing such papers, and the ballot-papers allowed as formal or rejected as informal.

Railway Act.—Nos. 10-14 and 17-18 deal with the construction of new lines of railway.

Crimes (Girls' Protection) Amendment.—No. 21 makes several minor alterations in the Act of 1910 dealing with offences against girls.

Income Tax (No. 24).—This is an amending Act which introduces a number of changes in the legislature dealing with income tax.

S. 5 raises the limit of exemption from £200 to £300, except for companies; and s. 6 provides for a reduction in the assessment of £50 in respect of each child wholly maintained by the father who is under the age of ten at the commencement of the year in respect of which the tax is levied. The reduction in the first place is made from so much of the income as is derived from personal exertion, but where the income so derived is less than the amount of reduction authorised, it may be deducted from income derived from produce of property.

The rate of income-tax is modified by ss. 9 and 10 to 1s. 2d. in the pound on the income of companies; and for persons where the income chargeable does not exceed £700, to 6d. in the pound on the amount of the income with the addition of one-third where the person is an absentee (*i.e.* one who during the twelve months preceding the day fixed for furnishing returns has resided at some place out of the Commonwealth of Australia), and with the addition of one-third of sixpence in any case on such of the income

as is derived from the produce of property. Where the income exceeds £700, the tax is graduated for such part as is in excess of that sum from 7d. in the pound to 1s. in the pound (for incomes exceeding £9,700) together with the additions specified. Income derived from personal exertion is to be taken into account first.

S. 16 provides that the Commissioners shall give notice to every tax-payer of any entry relating to the assessment of his income, and he shall be entitled to a copy of such entry certified by the Commissioners. The notice shall fix a day upon which the tax shall be due and payable.

3. QUEENSLAND.

[Contributed by LITTLETON E. GROOM, ESQ., *Member of the Australian House of Representatives.*]

Acts passed—Public, 31; Private, 1.

Public Health.—During the year 1911 several comprehensive statutes were enacted. The Health Act Amendment Act of 1911¹ makes important additions to and alterations of the Health Act of 1900. Several of the new sections bring the law of this State into line with that of Victoria (No. 2010) and New South Wales (Act of 1908) with respect to "pure food." The Act deals very fully with the adulteration and false description of food, drugs and other articles, and their sale. Special provisions have been enacted with respect to mixtures, food in packages, advertised articles, disinfectants and preservatives, milk, bread, short-weights, olive oil, beer, cooking utensils, and aerated waters. Wide powers are conferred as to the inspection, removal, sampling, and analysis of articles. The necessary machinery is enacted for the purpose of securing the due administration of the Act and punishment of offenders (ss. 10 to 59).

Amendments have been made of Part VII. of the principal Act relating to infectious diseases. A new provision has been made as to school children. No person shall knowingly send to school any child who then is, or within the space of eight weeks has been, suffering from scarlet fever, diphtheria, or any other disease to which this section has been extended, unless there is a written certificate from a medical practitioner stating that such child is free from infectious disease and infection (s. 62). Several new and elaborate sections have been enacted on the subject of venereal disease (s. 63). When the Governor in Council is satisfied that a visitation of any epidemic, endemic or infectious disease may be prevented or the spread thereof checked, by taking measures for the destruction of rats, mice, or other vermin or any insect life, he may by Order-in-Council declare rats, mice, or other vermin or any specified form of insect life to be noxious, and direct

¹ 2 Geo. V. No. 26.

the owner or occupiers of all or any premises to adopt the measures prescribed (s. 63 [132 F]). Extended powers are given to the Commissioner to make regulations for the purpose of preventing or checking the spread of infectious disease (s. 64). Fresh provision has been made as to the notification of infectious diseases (s. 65), and a new section inserted as to typhoid carriers. Where any two medical men certify that any person is suspected of being a typhoid carrier—that is to say, a person in any of whose body discharges the bacillus associated with typhoid fever and known as the *Bacillus typhosus* is occasionally or constantly found, and who does not show clinical evidence of typhoid fever—he may be detained as provided in the section (s. 65 [135 A]).

A new part (Part VIII.) has been enacted providing for the registration of private hospitals by local authorities in the manner set out in the Act. It is not lawful in any area to use any house, apartment, or premises as a private hospital unless it is registered under this Act (s. 68). No person is entitled to apply for or hold a certificate of registration of a private hospital unless such person is either a medical practitioner or a registered nurse (s. 69).

Certificates of registration of private hospitals are of two classes, namely: (a) of a general private hospital for the reception, care, and treatment of any cases including midwifery cases; (b) of a lying-in hospital for the reception, care, and treatment of midwifery cases only (s. 70). The person to whom a certificate of registration is granted is held responsible for the due conduct of the private hospital. The registered person, if a registered nurse, must continuously reside on the premises; and, if a medical practitioner, must either continuously so reside, or some registered nurse or medical practitioner appointed by him must continuously so reside (s. 76). Registered private hospitals must at all times be open to the inspection of the medical officer of health (s. 77).

The Act also establishes a Board for the registration of duly qualified nurses. Two members of the Board are medical practitioners nominated by the Medical Board; two medical practitioners or qualified nurses nominated by the registered nurses; and one a medical practitioner employed by the State in connection with an asylum for the insane. The Board shall cause such nurses to be registered in three classes: (a) general nurses, (b) midwifery nurses, (c) mental nurses. The qualifications of those who may be registered in each class are defined by the statute. Preference in all appointments of nurses under the Hospital Acts and asylums for the insane is to be given to registered nurses.

Children.—The State Children Act of 1911¹ repeals the whole of the Industrial and Reformatory Schools Act of 1865,² the Orphanages Act of 1879,³ and of the Industrial and Reformatory Schools Act Amendment Act of 1906,⁴ and s. 3 of the Children's Protection Act, 1896.

¹ 2 Geo. V. No. 11.

² 29 Vict. No. 8.

³ 43 Vict. No. 16.

⁴ 6 Ed. VII. No. 6.

Part II. deals with the constitution of a State Children Department. Such a department is constituted under the control of a Minister (s. 6). Power is given for the appointment of a Director of the department, whose duty it is to carry the Act into operation under the direction of the Minister (s. 7). Visiting justices, inspectors and other officers with such powers and functions as the Governor in Council deems necessary for carrying out the Act may also be appointed (s. 8). The Minister has the power to appoint also matrons, warders, and other servants of State institutions (s. 8), a Committee of Management, and Honorary Visitors (s. 9). Subject to the Act and the direction of the Minister, the Director has the care and control of all State children whether inmates of an institution or placed out or apprenticed until such children attain the age of eighteen years; and has control of their property until they attain the age of twenty-one years. The Director is made the guardian of all State children (s. 10). A State child is a neglected child, a convicted child, or any other child received into or committed to an institution, or to the care of the department, or placed out or apprenticed under this Act (s. 2). Every State child may be dealt with by the Director in the following ways: (a) placed in some receiving depôt; (b) detained in an institution; (c) transferred from one institution to another; (d) placed out or apprenticed; (e) placed in the custody of some suitable person who is willing to take care of the child (s. 11).

Part III. *Institutions*.—The Governor in Council may by Order-in-Council establish receiving depôts, orphanages, industrial schools, reformatories, training homes, training ships, farm schools, technical schools, and other institutions for the maintenance of State children (s. 14). The Governor in Council may also approve of private institutions, by issuing licences to them. The order approving an institution to which a child is committed names some person as superintendent. The governing authority of the private institution has, subject to the Minister, the management of it and the appointment of officers, otherwise the institution and inmates are subject to the Act. State aid is payable to each governing body until the child attains the age of thirteen years, at a rate not exceeding 6s. per week, and in the case of children crippled, invalid, of unsound mind, dumb or blind not exceeding 10s. per week. The licence may be withdrawn.

Part IV. *State Children*.—Subject to the approval of the Minister any child under the age of thirteen years may, on the application of its parent, guardian, or near relative, or any person of good repute, be admitted as a State child; and any child removed by the Commissioner of Police to the care of the department pursuant to the Infant Life Protection Act of 1905 shall be admitted as a State child. Every such State child is dealt with in the same way as any other child committed by a Court to the care of the department (s. 19). Any authorised officer and any police officer may, without warrant, take into custody any child appearing or suspected to be a neglected child. A very wide definition is given to the term "neglected

child" (s. 2). Notice has to be given to the department to enable the officer to attend the hearing of the case (s. 20). The Children's Court has power to declare such child a neglected child and may (a) commit the child to care of the department, or (b) send the child to some specified institution. Uncontrollable children may also be brought before a Children's Court to be dealt with under the Act (s. 23). Provision is also made for the Court to deal with convicted children (s. 24). No child can be detained in any institution or be under the care of the department after attaining the age of eighteen years (s. 25). The Minister may extend the period of care or detention by the department of any female State child until the age of twenty-one years is attained (s. 32). Convicted children over the age of thirteen years must be sent to a reformatory or industrial school (s. 26). Power is given to the director to apprentice children (s. 33) or place them out (s. 34). Children may be placed out with their mothers provided the mothers are widows or deserted (s. 35), and pecuniary assistance is then granted to such mothers (s. 35). Adequate provision is made to protect State children apprenticed or placed out.

Part V. *Maintenance of Children by their Relatives*.—The near relatives of a State child may be made liable to pay or contribute towards the maintenance of such child according to their several abilities, and in the following order: namely, (a) in the case of a legitimate child—father, mother, step-father, step-mother; (b) in the case of an illegitimate child—father, mother (s. 50). All complaints under this Part, except where otherwise expressly provided, must be by the Director or an authorised officer (s. 60).

Part VI. *Foster Mothers*.—No person shall act as a foster mother, for gain or reward, to any State child, without being licensed (s. 61). The duty of the foster mother is defined and provision made for the care and maintenance of the child.

Part VII. *General Provisions*.—Authority is given to the Department to appear in cases (s. 65). A restriction is placed on the employment of children to sing, play, or perform in public places, other than those licensed, or to offer anything for sale between the hours of 7 p.m. and 6 a.m. (s. 67). Penalties are provided for taking, removing, or harbouring State children, or for communicating with children in institutions (ss. 68, 69). Other provisions of a general character are enacted to carry out the provisions of the Act.

Education.—The State Education Acts Amendment Act of 1912¹ introduces several important changes. The standard of education has been re-defined to read: "Standard of education shall mean a competent knowledge, to the satisfaction of an inspector of schools, of English and mathematics, and of such other subjects as the Governor in Council may prescribe by regulation" (s. 3). Under s. 17 of the principal Act, before the establishment of a primary school in a new locality one-fifth of the estimated cost of erecting or purchasing the necessary school building was

¹ 2 Geo. V. No. 28.

required to be raised by subscriptions. This has been repealed, and the Queensland Act brought into line with those of other Australian States (s. 5). The principle of "leaving certificates" has been accepted. When a child has been educated in a State school up to the standard of education prescribed by the Act, the Minister may issue to such child a certificate that he has been so educated. When a child continues his education beyond the prescribed standard, a certificate may issue setting forth the standard attained (s. 6). The Governor in Council is empowered to establish continuation classes, and to direct that children over the age of fourteen and under the age of seventeen who have not been educated up to the standard shall attend the classes (s. 7). The Minister may provide for the medical and dental inspection of pupils, and is empowered to employ medical officers, dentists, and nurses (s. 7). Compulsory attendance at school is required of every child not less than six nor more than fourteen years of age unless some valid excuse exists (s. 8).

Aliens.—A new class of legislation has been introduced in the Leases to Aliens Restriction Act of 1912.¹ It has been made unlawful to grant any leases in any manner of land exceeding five acres in extent to any alien who has not first obtained in the prescribed manner a certificate that he is able to read and write from dictation words in such language as the Secretary for Public Lands may direct.

It is also made unlawful for an alien who has not first obtained such a certificate to become a lessee. Penalties are imposed. Rights under treaties are preserved.

Agricultural Banks.—The Agricultural Banks Acts Amendment Act, 1911,² liberalises in several important respects the principal Act of 1901 and the amending Acts. A change has been made in the management. Three trustees are appointed, one of whom must be the managing director. He holds office during the pleasure of the Crown (s. 3). Under the previous law the maximum advances allowed were 10s. in the £1 for the payment of existing liabilities or the purchase of stock and implements. S. 6 substitutes new provisions. The amount which may be advanced under this Act shall be determined by the fair estimated value of the holding, with all the improvements made and to be made thereon, after taking into consideration all sums already advanced and still owing on the security. Advances for any of the following purposes, namely, buildings not exceeding £40, ringbarking, clearing, fencing, draining, or water conservation may be made for an amount not exceeding £200, to the full value of the improvements proposed to be made. In no case shall the total amount of advances under this Act, exclusive of the advances made under the last preceding paragraph, exceed 12s. in the £1 of such estimated value. Under the 1904 Act, "no advance of principal under this Act shall be made to an alien." This Act adds, "who has not first obtained

¹ 2 Geo. V. No. 31.

² 2 Geo. V. No. 25.

in the prescribed manner a certificate that he is able to read and write from dictation words in such language as the Secretary for Agriculture may direct" (s. 6). Other sections alter and modify the provisions of the preceding Acts. S. 13 deals with the obligations of mortgagors. S. 14 confers powers upon the trustees to lease in lieu of selling on default. Protection is given to the trustees (s. 16).

Sugar.—The Sugar Works Act of 1911¹ authorises the construction and establishment of sugar works by means of moneys advanced by the State, and provides for the repayment of such moneys, and for the maintenance, management, and control of such sugar works. The owners or occupiers of cane lands within a specified locality may apply to the Governor in Council for the construction of sugar works upon a suitable site (s. 3). Prescribed particulars must be furnished, and certain documents forwarded (s. 4). Every application has to be submitted by the Treasurer to a valuer (s. 5). The Treasurer may, by notification in the *Gazette*, give notice that it is the intention of the Governor in Council, at the expiration of ninety days, to create a sugar-works area, with the boundaries to be specified, in the locality referred to in the application, and to construct sugar works therein, and to extend the provisions of the Act to all the land comprised therein and to the owners and occupiers thereof (s. 6). After the expiry of such period the Governor in Council may create a sugar-works area (s. 7). For each sugar works there may be appointed a Board of Advice (s. 8).

Under the Sugar Works Guarantee Act Amendment Act of 1908 there was constituted the corporation of the Treasurer. The Governor in Council may direct and empower the corporation to construct, manage, maintain, work, and control sugar works within a sugar-works area. The cost of the construction is to be defrayed out of moneys appropriated by Parliament. An education test is provided. The corporation shall have power to grow cane upon any land within or outside the sugar-works area, and to purchase cane from any person whatsoever. But no cane shall be purchased from any person who has not first obtained, in the prescribed manner, a certificate that he is able to read and write from dictation not less than fifty words in the English language. A similar test is provided with respect to those employed in or about the construction, maintenance, management, or working of any sugar works (s. 9). Within every sugar area a suitable site has to be set apart for a township. This has to be divided into allotments of suitable size, and open to perpetual lease. The corporation is empowered to erect accommodation, lodging and other houses, and furnish the same (s. 11). Sale of intoxicating liquor is prohibited in a sugar-works area (s. 12). When the sugar works are ready to commence operations, a certificate declaring the capital cost is published (s. 10). The original capital cost as certified is deemed to be a loan by the Treasurer to the corporation for twenty-one years (s. 15). Repayment

¹ 2 Geo. V, No. 8.

is to be made at a rate equal to £7 12s. 4d. per annum for every £100 of the loan (s. 17). As often as profits of the sugar works in any year are not sufficient to pay the annual instalment, then a rate may be levied upon the owners and occupiers of land to make good the deficiency. The land is rated upon the basis of the unimproved capital value (s. 19). When the moneys due by the corporation to the Treasurer have been repaid, the Treasurer has to publish a certificate to that effect (s. 24). A certificate has also to be published declaring each person who has supplied cane to the sugar works or paid any rates, and the amount of cane credit of such person (s. 25). The persons mentioned in the certificate as having established cane credit may form themselves into a company (s. 26), and upon its formation the corporation must transfer to it the title and interest in the sugar works.

Pilotage.—An amendment of the Navigation Act¹ makes an important alteration. It enacts that there shall be no civil remedy against any pilot in the employment of the State in respect of damage occasioned by negligence or want of skill (s. 2), nor shall the Crown be liable. Power is conferred to cancel a pilot's licence on account of advanced age, physical disability, want of skill, or neglect of duty.

Other statutes enacted were :

An Act to declare the Rights as to Superannuation of certain members of the Police Force.² An Act to amend the Land Surveyors Act to provide for the settlement of disputes between contract surveyors and any State Department.³ The Partition Act of 1911,⁴ which enables the Court to order the sale of land instead of its division in an action for partition.⁵ An Act to make provision for the application of the proceeds of sales by auction of Crown land.⁶ The Rabbit Boards Act Continuation Act, 1911.⁷ An Act to abolish fees payable on the Registration of Dairies under the Dairy Produce Act of 1904.⁸ The Workers' Dwellings Act Amendment Act of 1912.⁹ The Government Savings Bank Acts Amendment Act of 1912.¹⁰ The Wages Boards Act Amendment Act of 1912,¹¹ which amends the law in several important particulars.

¹ 2 Geo. V. No. 5.

² 2 Geo. V. No. 13.

³ 2 Geo. V. No. 14.

⁴ 2 Geo. V. No. 18.

⁵ Cf. 31 & 32 Vict. c. 40. ss. 3, 6, 9; and 39 & 40 Vict. c. 17, ss. 3-7, 10.

⁶ 2 Geo. V. No. 19.

⁷ 2 Geo. V. No. 20.

⁸ 2 Geo. V. No. 22.

⁹ 2 Geo. V. No. 27.

¹⁰ 2 Geo. V. No. 29.

¹¹ 2 Geo. V. No. 30.

4. SOUTH AUSTRALIA.¹

[Contributed by A. BUCHANAN, ESQ.]

Acts passed—General, 39 ; Private, 2.

Constitution.—The Governor's Appropriation Act, No. 1065 of 1911, enables the Governor, without any authority other than this Act, to appropriate by warrant to the public service within the State, from revenue, before obtaining the consent of Parliament, in any financial year, amounts not exceeding in the aggregate £200,000, of which not more than £50,000 may be for purposes not mentioned in the estimates of expenditure for the same financial year, or when those estimates have not yet been laid before Parliament for purposes mentioned in the estimates of the next preceding financial year.

The Deputy Governor's Powers Act, No 1072 of 1911, to set at rest any doubts that may have been entertained, expressly declares that during the temporary absence of the Governor from the seat of Government or from the State all the powers and authorities vested in him by any statutory or other law or usage of the State as well as the powers and authorities conferred upon him by Letters Patent shall be exerciseable by the person appointed to be his Deputy during such absence—subject to anything expressed in the instrument appointing such Deputy (s. 3) and the same as to the Deputy of the Lieutenant-Governor or other Administrator of the Government (s. 4) and validates past acts (s. 5).

Estimates of Expenditure.—The estimates for the financial year 1911-12, as passed by the House of Assembly, contained a line: "Brickworks including site (first instalment) £10,000"; and another line: "Purchase of timber and firewood for resale, £1,000." The Legislative Council claimed that these two lines were not such items of ordinary expenditure for the year as could properly be included in the estimates, but were of the nature of a tack, inasmuch as whether the State should or should not embark in the businesses of brickmaking and the supply of firewood to the public were questions of policy, in the decision of which that House was entitled to have a voice, and refused to pass the estimates unless the lines objected to were withdrawn by the lower House. The House of Assembly refused to withdraw the items, and a deadlock ensued, followed by a penal dissolution, which sent one-half of the members of the Legislative Council, as well as all the members of the House of Assembly, to the country. The result of this General Election being adverse to the Ministry, a change of Government took place, and at a special Session of the new Parliament held in March 1912, the original estimates were passed unaltered save by the omission of the two lines in controversy.

¹ The legislation of the year 1911, being that of the second session of the twentieth Parliament.

Railways.—The Transcontinental Railway Land Grant Act, No. 1069 of 1911, empowers the Governor to grant to the Commonwealth authorities such Crown lands in South Australia as are necessary for the construction, maintenance, and working of that portion of the Kalgoorlie to Port Augusta Railway within South Australia, provided that the lands so granted without consideration shall not exceed one-eighth of a mile in width on either side of the said railway, and shall not include any town lands, and that if any town or township be proclaimed on any of the lands so granted the title to the lands so proclaimed shall revert to South Australia (s. 3). The Act is to be brought into force by Proclamation, which is not to be made until a corresponding Act shall have been passed in Western Australia consenting to the construction by the Commonwealth of the portion of the said railway within that State (s. 2).

The District Railways Act, No. 1067 of 1911, provides that a Local Government body shall, on the petition verified in the prescribed manner of not less than fifty of its ratepayers specifying the proposed railway, proposed railway area, and other particulars, apply to the Minister to constitute such railway area (ss. 5-9). The Minister shall refer the application to the South Australian Railways Commissioner to report his recommendations and estimates (s. 10) and may amend the application (s. 11) and, if he approves, publish notice thereof in the *Government Gazette* (s. 22), furnish copies of the Commissioner's report, and of the preliminary plan of the proposed railway and of the *Gazette* notice to each Local Government body concerned (s. 14), and, unless the proposed railway is to be a mono railway worked by animal power, lay the like copies before Parliament. If each House of Parliament shall pass a resolution approving of the proposed railway being constructed, notice of the passing of such resolutions shall be gazetted (s. 16). Part III. provides the machinery for taking a poll of the ratepayers of the constituent Local Government bodies who are assessed in respect of land within the proposed area; and if the negative votes cast exceed one-third of the total votes cast, then the railway area shall cease, and the proposed railway shall not be proceeded with, and the cost of the proceedings shall be borne by the constituent Local Government bodies. But if the negative votes do not exceed one-third, then the proposed railway is deemed to be authorised. Part IV. provides for the construction and management of the authorised railway by the Railways Commissioner. Part V. contains the financial provisions. The cost of the railway is to be provided out of moneys provided by Parliament (s. 33), and the amount of such cost, including the cost of the preliminary proceedings and of rolling stock (s. 35), is to be certified by the Railways Commissioner (s. 34), whose final report is to be gazetted and conclusive (s. 36). A special account shall be kept (s. 38), to which all the earnings of the railway shall be credited (s. 39), and interest at 4 per cent., with yearly rests, and working expenses shall be debited (s. 40). The account shall be balanced at the end of each

financial year, and the balance carried to the Special Fund constituted in respect of the railway; and whenever the Special Fund shows a debit balance the same shall be made good by the rating authority appointed in respect of the railway (s. 41) upon notice from the Railways Commissioner, by the declaration and collection of a railway rate (s. 42). Lands are to be valued for rating purposes (ss. 43-9), and rates levied and applied (ss. 50-59). Where the railway authorised is a mono railway to be worked by animal power the function of the Railways Commissioner shall be discharged and exercised by the Engineer of Roads and Bridges.

Aborigines.—Act No. 1048 of 1911 makes provision for the protection and control of aboriginal and half-caste inhabitants of the State of South Australia by an Aborigines Department under a Minister (s. 5) with funds to be provided each year by Parliament (s. 6) to be applied for the assistance and necessities of aborigines and the custody and education of children of aborigines (s. 7, sub-ss. 1-5), and charged with management of reserves for and general supervision over matters affecting the welfare of aborigines (s. 7, sub-ss. 6-7). A Chief Protector of Aborigines is to be appointed (s. 8 (1)), responsible for the administration of the Department (s. 9). Protectors may be appointed and districts assigned to them (s. 8 (2)). The Chief Protector is made the legal guardian of every aboriginal and half-caste child until twenty years of age, and each Protector is within his district made the local guardian of each such child within his district (s. 10). Districts may be proclaimed (s. 11). Aborigines or female half-castes or half-castes under sixteen years of age must not be removed out of a district without the authority in writing of a Protector (s. 12), and such authority may be given only upon proper security for the expenses of bringing back the aboriginal or half-caste. The Governor may on resolutions of Parliament proclaim reserves (s. 14) or grant leases of Crown lands to mission or other aboriginal institutions (s. 16), and the Chief Protector may have aborigines or half-castes removed to and kept at such reserves or institutions (s. 17), subject as regards institutions to the consent of the governing body (s. 17 (2)). The Minister may on the recommendation of the Chief Protector and Surveyor-General allot to an aboriginal not exceeding 160 acres of Crown lands or purchased land. Aborigines in lawful employment or married to and living with a non-aboriginal husband are not liable to be removed to reserves or institutions (s. 19). It is an offence for a person not an aboriginal to enter or remain in, without a valid excuse, any reserve or institution (s. 20), or to remove or entice or persuade an aboriginal to remove from a reserve or institution (s. 21). The Governor may establish or maintain hospitals or appropriate parts of public hospitals for the treatment of aborigines (s. 24), and may proclaim lock-hospitals in which aborigines may be treated and detained (s. 26). Protectors and public officers are given powers of inspection and inquiry wherever aborigines or half-castes are employed (s. 27), and the death of an aboriginal or

half-caste employee must be notified, and wages due and moneys in possession of the deceased paid to the nearest Protector (s. 29). Bedding, clothing, and other property supplied to aborigines by the Department remain the property of His Majesty (s. 30), and it is made an offence for any aboriginal to sell or dispose of such property, or for any other person to purchase or take possession of it (s. 30 (2)). Aborigines may be prevented from camping in or near towns or townships or ordered to remove to such distance as may be directed (s. 31) and may, if loitering in such places and not decently clothed, be ordered forthwith to leave (s. 32). Any town or specific areas may be proclaimed in which it shall not be lawful for aborigines, not in lawful employment, to be or remain (s. 33). It is made an offence on the part of both for a female aboriginal dressed in male attire to be in the company of a male person other than an aboriginal (s. 34). The Chief Protector may by consent act as the curator of the property of any aboriginal (s. 35). Maintenance of half-caste children of aboriginal mothers until eighteen years of age may be recovered from the father by summary proceedings before justices (s. 36). There is the ordinary power to make regulations (s. 38), which have to be laid before Parliament (s. 39). In legal proceedings the tribunal, in the absence of sufficient evidence, shall determine according to its own opinion the question of whether a person is, or is not, an aboriginal or half-caste, or under a specified age (s. 45).

Public Service.—The Civil Service Further Amendment Act, No. 1061 of 1911, extends the benefit of the long leave provisions of the Civil Service Amendment Act of 1894 to certain specified officers on the administrative and clerical staff of the South Australian Railways (s. 3), and further provides that in the case of the death of a civil servant during the currency or before the commencement of any long leave actually granted or approved salary for the unexpired portion of the leave may be paid to his dependants (s. 4).

Education.—The Adelaide University Amendment Act, No. 1058 of 1911, grants to the University an additional annual grant of £4,000 payable out of general revenue (s. 10) and adds to the Council, the governing body of the University, five new members (s. 3) to be appointed by ballot, two by the Legislative Council and three by the House of Assembly from amongst their own members (s. 4) at the beginning of each Parliament (s. 5), but to vacate office upon ceasing to be a member of the House by which he was appointed (s. 6). Power is given to the University to confer, after examination, the degrees of Bachelor of Engineering and Master of Engineering or without examination the like *ad eundem* degrees to persons who have graduated at other Universities.

Profession of the Law.—The Female Law Practitioners Act, No. 1050 of 1911, entitles any woman, on complying with the Rules of Court in that behalf, to be admitted to practise as a barrister, attorney, solicitor and proctor of the Supreme Court.

Oaths.—The Promissory Oaths Amendment Act, No. 1037 of 1911, alters the forms of the official and judicial oaths so as to extend to heirs and successors according to law instead of being restricted to the Sovereign in person as previously prescribed by the Promissory Oaths Act, 1869. This Act was passed to set at rest doubts which had arisen on the recent demise of the Crown as to the necessity of those oaths being taken afresh to the new Sovereign.

Oaths and Affirmations.—Act No. 1056 of 1911 dispenses with the kissing of the Book by providing that the ordinary manner of taking an oath shall be by the person standing up holding a copy of the Bible or New or Old Testament in his hand, and uttering the words "I swear" after the oath has been tendered by the officer administering the same (s. 3), but an oath may be administered in any manner previously lawful (s. 4 i.) and shall be binding if administered in a form declared by the person taking the same to be binding (s. 4 ii.), and want of religious belief shall not invalidate an oath when taken (s. 4 iii.). A short and amended form of affirmation is prescribed, "I, A.B., do solemnly, sincerely and truly affirm and declare," followed by the words of the oath, omitting the words of imprecation (s. 5).

Law of Property.—Act No. 1045 of 1911 provides that no gift, whether by testamentary disposition or by instrument *inter vivos*, made after the passing of the Act shall be held void on the ground alone that the testator or donor has attached thereto an illegal stipulation whether by way of limitation or condition precedent or subsequent unless it be proved that the donee consented thereto at or prior to the execution of the testamentary disposition or instrument by the testator or donor.

Ancient Lights.—Act No. 1043 of 1911 prevents after its passing the accruer of rights to ancient lights from continued enjoyment or any presumption of a lost grant.

Immigration.—Act 1057 of 1911 repeals the Act of 1872 under which Land Orders were granted in respect of assisted passages (s. 3), provides for the appointment of a Chief Emigration Agent in Great Britain and sub-agents there, and elsewhere, and of an Immigration Officer and sub-officers in South Australia (s. 4). Emigration agents may grant assisted passages to South Australia to approved emigrants unable to pay the whole cost (s. 6) who may be nominated by any natural born or naturalised British subject upon making the prescribed payment (s. 7). Before an assisted passage is granted to any person the emigration agent is to ascertain in what industry he intends to seek employment and furnish full information as to the rates of wages in South Australia fixed or prevailing in such industry (s. 8). Regulations may be made (s. 9). A penalty not exceeding £100 together with the actual amount (if any) of assistance granted is imposed on any person making any false statement for the purpose of obtaining for himself or any other person an assisted passage (s. 11).

Crown Lands.—Act No. 1068 of 1911 allows the surrender of certain

closer settlement lands agreements in exchange for perpetual leases (s. 8), empowers the Commissioner to reduce the purchase money under such agreements (s. 9) and, if deemed expedient, to allow such agreements to be entered into (s. 11) or transferred (s. 12), although thereby the value of an individual holding may exceed £2,000 provided it does not exceed £8,000 unimproved value, and makes other amendments.

The Advances to Settlers on Crown Lands Act Amendment Act, No. 1052 of 1911, repeals the amending Act No. 994 of 1909,¹ and increases the limits of the advances which may be made under the principal Act, No. 960 of 1908.² Advances for making improvements upon a holding (s. 5, 13 (1) a) may be made not exceeding £400 up to the fair aggregate value of the holdings including improvements (s. 5, 13 (2) i.) and not exceeding an additional £250 up to three-fourths of such aggregate value in excess of £400 (s. 5, 13 (2) ii.). Advances may be made to a settler for stocking his holding (s. 5, 13 (1) b) to an amount not exceeding £200 (s. 5, 13 (1)). Advances may be made to discharge already existing mortgages on a holding (s. 5, 13 (1) c) up to three-fourths of its fair estimated aggregate value (s. 5, 13 (4)).

Travelling Stock.—Act No. 1044 of 1911 provides that every drover (whether the owner or not) in charge of stock on a journey exceeding fifty miles must have in his possession a way-bill showing the name of the owner and drover, particulars of the stock, of the points of departure and destination and route (ss. 5 and 6). Inspectors, rangers, and police officers may at any time demand the production by a drover of his way-bill and may, in the absence of a reasonable account, impound any stock under the drover's charge not included in the way-bill (s. 7). To purchase stock from drovers without the production of a way-bill, unless the drover shall have produced to the purchaser a written authority from the actual owner to sell, is made an offence rendering liable to a £10 penalty (s. 9). In the event of a lost way-bill an interim way-bill may be granted by an inspector or police officer (s. 10). There is power to make regulations for carrying out the objects of the Act (s. 15).

Pest Prevention.—The Vermin Act Amendment Act, No. 1066 of 1911, amends the machinery for Vermin Boards to borrow money from the Government for the purchase of materials for vermin-proof fencing to be supplied to occupiers within a special area within a district (s. 4) and for the exercise of the special remedies of letting or sale of lands or distress for the recovery of amounts due by occupiers (ss. 5-11), and makes various amendments in the principal Act (ss. 18-23). Poison for the destruction of vermin may be laid by Vermin Boards or other local authorities, or by the occupiers, but not within one hundred yards of a public way, and a conspicuous notice must be exhibited on the land (s. 24).

¹ See Journal, N.S. vol. xi. p. 383.

² See Journal, N.S. vol. x. p. 348.

The Phylloxera Act Amendment Act, No. 1060 of 1911, provides for the giving of notice and furnishing of returns to the Secretary of the Phylloxera Board of all persons who own, acquire, or plant vineyards (ss. 6-13) and for the giving of returns where the vineyards exceed one acre in extent (s. 62) and for the giving of notice by persons who cease to be owners of vineyards exceeding one acre in extent (s. 7), and for the revision from time to time of the Vignerons Roll (s. 8). The cost of destruction of unused or abandoned vineyards is made recoverable from the owner (s. 11). When and as long as the Phylloxera Fund amounts to not less than £5,000 the Board is given power in its discretion to suspend the levying of rates upon any vineyard upon which all rates have been paid during a continuous period of fifteen years (s. 12).

Advances for Homes.—Act No. 1047 of 1911 raises the amount which may be set apart in any one financial year for the purposes of principal Act from £100,000 to £300,000.

Industrial and Trade Regulation.—The Early Closing Act, No. 1062 of 1911, consolidates and amends previous legislation regulating the closing times for shops. Part II. constitutes certain Shopping Districts and provides for the constitution of others by Proclamation following upon a petition and, if approved, the favourable result of a poll of electors within the proposed district. In each Shopping District there shall be a compulsory half-holiday upon one specified week-day, which may be changed upon petition followed, if approved, by the favourable result of a poll. Part III. provides for the administrative machinery of a Registrar and inspectors for each Shopping District, and that the Chief Inspector of Factories under the Factories Act, 1907, shall be the Chief Inspector of Shops with powers for inspectors and members of the police force to enter shops and interrogate persons found there. Part IV. provides for the registration of all shops in the prescribed manner, and prohibits the occupation after the time for registration has expired of shops not registered. Part V. provides that closing times of shops within Shopping Districts shall be ordinarily six o'clock, on Saturdays nine o'clock, and on the day of the compulsory half-holiday one o'clock, but if Saturday be the day of the half-holiday, the closing time on Friday is extended to nine o'clock (s. 37). When a public holiday occurs the nearest compulsory half-holiday need not be kept, and the night for keeping open till nine o'clock may be changed to the week-night immediately preceding the public holiday (s. 38). Penalties are imposed upon shopkeepers for keeping shop open (s. 39) or selling or exposing goods for sale (s. 40) after the prescribed hours; for not allowing assistants the prescribed half-holiday (s. 41) or requiring or permitting an assistant to work after closing time (s. 42), with a quarter of an hour's grace to serve customers actually inside the shop at closing time, and to tidy up and close the shop (s. 43), and upon assistants who work for their employers in or about the shop or elsewhere after closing time or who remain in the business

part of the shop for more than thirty minutes after closing time on any compulsory half-holiday, or more than twenty minutes on any other day (s. 44), and upon any person entering any shop after closing time for the purpose of buying or receiving goods (s. 46). Certain classes of shops (sch. I.) for the supply of immediate personal requirements are exempt from the closing provisions of the Act, but each assistant employed is to be allowed a weekly half-holiday from one o'clock (s. 47). Any particular class of exempt shop may be brought into line with other shops in the Shopping District as regards the compulsory half-holiday upon the petition, and if necessary a poll, of a majority of the shopkeepers and shop assistants to be affected (ss. 49-55), and upon a similar procedure particular classes of shops may cease to be exempt (ss. 56-62). The employment in any shop of a person under the age of sixteen years for more than fifty-two hours is prohibited, and the Act limits the maximum hours in any one day to nine, except one day a week, when it may extend to eleven, or with the written consent of the Minister in respect of a person named it may be further extended to twelve hours on not more than forty days in any year (s. 64).

The Workmen's Compensation Act, No. 1053 of 1911, repeals prior Acts, and in substance follows the Imperial Act, 6 Ed. VII. c. 58.

The Steam Boilers and Engine Drivers Act, No. 1064 of 1911, requires the registration of steam boilers by the owners (s. 6), and fresh particulars from the owner upon alterations or additions (s. 7), notice of sale, hire, or removal (s. 10), and the marking of the registration number plainly upon the boiler (s. 11). The use of an unregistered boiler is made an offence (s. 12). Every boiler must be fitted with certain fittings (s. 13) and two safety valves, one of which must be beyond the control of the person in charge (s. 14). Pressure must not be increased beyond the authorised working pressure (s. 17). A Chief Inspector and inspectors may be appointed (s. 18) and supplied with necessary testing appliances (s. 21), who are given powers to call in aid (s. 22), to enter by day or night to ascertain whether the Act is being complied with (s. 24). Every boiler is to be inspected at least once each year (s. 25), but of an internal inspection seven days' notice is to be given (s. 26), and the owner must render such assistance as required (s. 27). Upon inspection notice of defects found and repairs required are to be given to the owner, who must desist from use of the boiler until defects are made good. In case of appeal to the Board, such notice will be suspended pending the determination of the appeal, but not exceeding thirty days (s. 28). Upon the first inspection of a boiler a full record shall be made (s. 29), and at each subsequent inspection all changes (if any) are to be recorded (s. 30). Upon inspection the inspector, if satisfied, is to issue a certificate of safety (s. 32) for a period not exceeding one year, but which ceases to remain in force if any alterations or additions be made without the approval of the inspector, or if cancelled by the Chief Inspector for reasons of safety (s. 33). The certificate must be ex-

hibited in a place conspicuous to persons working about the boiler (s. 35). Notice and particulars of an explosion or accident causing damage to a boiler must be given to the nearest Inspector or to the Chief Inspector (s. 36), and the boiler and other things are not to be interfered with, except so far as necessary to prevent further damage or to disconnect from other boilers, pending the inquiry (s. 37) to be made by the Chief Inspector or inspector, and the result reported to the Minister (s. 38), who may direct an inquiry by a Special Magistrate with the assistance of a skilled assessor; after taking evidence, and if necessary inspecting, the Special Magistrate is to report to the Minister as far as possible the causes of the explosion or accident, and may make an order as to costs of the inquiry (s. 39). No boiler is to be in charge or control of a person other than a male of at least twenty-one years of age (s. 40). Power is given to the Governor to exempt by Proclamation specified boilers or classes of boilers, or boilers used in specified businesses or localities, either from the operation of the Act or from the provision requiring two safety valves. Part III. of the Act provides for the examination of engine drivers and the issue of first-class certificates entitling the holder to drive and have charge of any steam stationary engine; second-class certificates entitling the holder to drive and have charge of any such engine other than a winding engine; third-class certificates entitling the holder to drive and have charge of any such engine whereof the cylinder or combined cylinders area does not exceed 12 inches (s. 45); and locomotive and traction engine drivers' certificates (s. 46). Applicants for examination must produce a medical certificate of physical fitness (s. 47), and satisfy the Board as to sobriety and general good conduct (s. 48). During two years after the passing of the Act the Board may issue certificates of service of the various classes without examination upon proof of not less than three years' service before the passing of the Act (s. 49). Certificates may also be granted without examination to the holders of certificates of corresponding status granted by a recognised authority outside the State (s. 50). The Board may call upon the holder of a certificate to show cause why it should not be cancelled or suspended upon an inquiry to be held on oath before a person or persons appointed by the Minister for that purpose, upon whose report to the Board the Minister may act (s. 51). For any engine-driver to act without a certificate, or when, by reason of physical defect or infirmity, unfit to act, or for any person to cause or permit an engine-driver to be so employed, is made an offence (s. 52). Power is given to the Governor to exempt by Proclamation engine-drivers employed in specified parts of the State either generally or as regards specified classes of engines (s. 54). A Board is constituted of the holders of certain specified offices which demand technical knowledge to hold examinations, grant certificates, and perform its other functions in accordance with rules to be made by the Minister (s. 55). The Act does not apply to motors unless propelled by steam, and then to a modified extent

only (s. 57). The liability of the owner or person in charge in any civil or criminal proceeding remains unaffected by the Act (s. 59).

The Footwear Regulation Act, No. 1046 of 1911, provides that no person shall, under a penalty not exceeding £20, manufacture, sell, or possess for sale boots or shoes having the appearance of leather unless such soles are of a solid leather, or there is conspicuously stamped on the outer surface of such soles a statement of the materials composing the same (s. 4). Inspectors may be appointed (s. 5) with power to enter, inspect, and purchase (s. 6), who may not be obstructed under a penalty not exceeding £20 (s. 7). Innocent purchasers from manufacturers, importers, and wholesale dealers are protected (s. 9). Regulations may be made for carrying out the objects of the Act (s. 10).

Health.—The Health Act Amendment Act, No. 1063 of 1911, creates a Metropolitan County District (s. 4), and constitutes the County Board for the metropolitan area under the Food and Drugs Act, 1908,¹ the County Board for such district (s. 5), and transfers to such County Board from the several Local Boards within the district all powers, duties, and liabilities with reference to land, premises, or places where animals are slaughtered, or meat, food, or drugs are exposed for sale or prepared or stored for human consumption, or where animals which are, or the produce of which is capable of being, used for food are kept, or where persons are employed in the production of articles of food (s. 6, *a*), and with reference to persons, premises, and things employed in the production of food (s. 6 *b*, *c*), and with reference to anything which will provide or tend to provide security for the sale of food and drugs in a pure and genuine condition (s. 6, *d*).

The Metropolitan Abattoirs Further Amendment Act, No. 1059 of 1911, amends the basis upon which the Board's lands are to be rated by Local Government bodies (s. 3), increases the borrowing powers of the Board by £55,000 (s. 4), gives the Board an exclusive right to slaughter stock at the abattoirs and to charge fees (s. 10), and of delivering the meat to the owners within the metropolitan abattoirs area, with a lien for slaughtering fees and delivery charges (s. 11). Industrial disputes are to be settled by arbitration, or if arbitrators be not agreed upon, by the Court of Industrial Appeals, whose award or decision shall be final, and not reopened within twelve months (s. 12). Strikes are prohibited (s. 13). The Board are absolved from liability for breach of contract owing to any strike, lock-out, or other circumstance (except want of funds) beyond the control of the Board (s. 14). The Board is given a monopoly of the sale by auction within the metropolitan abattoirs area of cattle, sheep, calves, and pigs.

The Abattoirs Act, No. 1055 of 1911, is a comprehensive measure of ninety-seven clauses for the establishment and control of abattoirs. Part II. provides for the proclamation of abattoir areas (outside of a defined metropolitan area) upon a petition supported by the result of a ratepayers' poll

¹ See Journal, N.S. vol. x. p. 350.

(ss. 9-12), to be administered by a Board (s. 19) which, when the area proclaimed is coincident with a Local Government area, shall be the Local Government authority, and in any other case be constituted in a manner approved by the Governor (s. 13). Areas may be extended (ss. 14-16) or amalgamated (s. 17) upon a similar procedure. Every Board is made a body corporate (s. 20), and its procedure and powers are set out (ss. 21-43). Part III. imposes on the Board the duty of establishing an abattoir for the area, but which need not be within the area (ss. 44-7), at the expense of the Local Government bodies comprised in the area, who may declare rates or borrow moneys for the purpose (s. 46). The revenue derived by the Board from the abattoir or other sources must be applied in payment (1) of expenses; (2) interest on borrowed moneys; (3) maintenance and upkeep of works; (4) sinking fund to repay expenditure on plant and machinery within fifteen years, and to repay all borrowed moneys within forty-two years; and (5) distribute any surplus, subject to a power to carry one-third thereof to a reserve fund, to the constituent Local Government bodies. Part IV. provides for the registration of abattoirs (s. 51), and after notice thereof (s. 52) prohibits the slaughtering of stock or dressing of carcasses within the abattoir area except at the abattoir (s. 53 (1) *a* and *b*), or the sale or exposure for sale of any carcass or meat, if slaughtered within the area, elsewhere than at the abattoir (*c*, i.) or, if slaughtered outside the area, unless together with the prescribed organs first brought to the abattoir, and their inspected and branded (*c*, ii.), or of immature veal (s. 53 (1) *d*) or, except on the written request of the Minister controlling the Government Produce Export Department, the slaughtering at such abattoir of any sheep or lambs for export, or the exporting of the carcass of any sheep or lamb there slaughtered (*e* and *f*). After due notice every private slaughter-house and abattoir within the area is to be closed, unless slaughtering for export only, whether in carcass or tin (s. 56), compensation being payable to the owners (s. 57). Slaughtermen are to be licensed (s. 58), who, on pain of instant dismissal, are to report any disease discovered in slaughtered stock (s. 60). Stock is to be slaughtered in the presence of an inspector (s. 61), and if found to be diseased the carcass is to be burnt or otherwise rendered unfit for consumption (s. 62). If a majority of butchers agree to contribute to a compensation fund in respect of condemned meat (subject to approval by the Minister of the agreement), contribution by all butchers carrying on business in the area may be made compulsory (s. 63). Other administrative powers are given (ss. 64-74). Part V. gives power to a Board compulsorily to acquire lands for its purposes. Part VI. makes provision for regulations, and Part VII. contains the usual evidentiary and procedure sections.

5. TASMANIA.

Acts passed—Public, 65 ; Private, 4.

Printing and Newspapers.—Act No. 14 consolidates and amends the law relating to printers and newspapers. It repeals three Acts,¹ and follows in large measure the New Zealand Consolidation Act.² All printing presses must be registered with the Registrar of the Chief Court, and every person who prints a paper or book for publication or dispersion, whether gratuitously or not, must print on the first and last leaf his name and his usual address. The printer must also keep a record of the employer's name and address in the case of any paper which is printed for payment. Persons distributing papers not authenticated as required by the Act may be seized by any person in whose presence such distribution takes place, and handed over to a constable to be taken before a justice of the peace to be tried in respect of the alleged offence against the Act. Search warrants may be granted where there is suspicion of the existence of unregistered presses. No newspaper can be printed or published except under the following conditions. The publisher must deposit with the Registrar a statutory declaration giving information as to the names of the printer, the publisher, the place of printing, and the name of the newspaper. In any proceeding, civil or criminal, affecting any newspaper, the declaration so deposited shall be conclusive evidence as against the persons signing it of the truth of the allegations contained therein. The name of the printer and publisher, and the address where the paper is printed or published, must be printed at the end of every newspaper, and if in any proceedings a copy of the newspaper corresponding with the form indicated in the declaration is produced, the proof of the purchase of the paper at the defendant's office shall be dispensed with. In any proceedings of the Supreme Court the plaintiff shall be entitled to the discovery of the name of any person concerned in the property of or in any newspaper as printer or publisher or otherwise of any matter relating to the printing or publishing thereof in order to enable him more effectually to bring or carry on any action for damages by reason of libellous matter contained in the newspaper. Prior to the publication of a newspaper the printer or publisher must, with two, three, or four sureties enter into a recognisance, himself in a sum of £400, and the sureties, for a like sum, for the payment of the amount of any fine or penalty inflicted for the printing or publishing of a blasphemous or seditious libel, or of damages or costs recovered for the insertion of a libel in the paper.

Closer Settlement.—Act No. 15 amends the Closer Settlement Act of 1906³ in minor details. Power is given to the Minister to acquire blocks of private land in any part of the State, and the provisions of the Land

¹ 9 Geo. IV. No. 7, 8 Wm. IV. No. 11, and 64 Vict. No. 1.

² No. 148 of 1908.

³ 6 Ed. VII. No. 33.

Clauses Act are to apply generally in the case of the acquisition of land for closer settlement. The procedure to be adopted is as follows : If the Minister thinks there is a legitimate demand for land for closer settlement, the Board is required to obtain a report from an officer as to the suitability of any private land. If the Board recommend after receiving this report that any private land is suitable, the Minister may purchase the land at a price not exceeding that recommended by the Board. Compulsory powers are given only in cases where the unimproved value of the land exceeds £12,000. The owner of an estate in possession, the whole of which it is proposed to acquire compulsorily, may select in one block and retain for the purposes of residence or business, land the unimproved value of which does not exceed £5,000. If there is a homestead upon the land which is proposed to be taken, the Minister may require the owner to include this homestead in the lands retained. If the owner proposes to select a block with a road, river, lake, or sea frontage, the width and depth of the block shall not exceed the proportion of one to two. In other cases the block shall be laid out as nearly as practicable in the form of a square. The right to retain shall be so exercised as not to prejudicially affect the land proposed to be taken. If it is proposed to take compulsorily less than the whole of the estate, the owner shall have the right to require the whole to be taken, subject to his right to retain a part in accordance with the foregoing provisions. To prevent evasion or avoidance of the provisions no subsequent division of the estate after the date of publication in the *Gazette* of notice of intention to acquire compulsorily shall defeat the power of the Minister to acquire the land within a period of six months after the date of publication.

When it is intended thus to acquire land the Minister must publish the intention in the *Gazette* and some newspaper, and the notice must require every claimant to serve a claim for compensation upon the Minister. As soon as convenient after the publication, a copy of the requisition must be served on the owner, accompanied by a plan and description of the land to be taken. The owner must serve a claim for compensation within thirty days after the service of the requisition if he is in the Commonwealth of Australia, or 100 days in any other case, giving full information as to his interest and the amount of compensation claimed, and stating whether he desires to retain land. Not later than fourteen days after serving the claim the owner must file in the office of the Registrar of the Supreme Court a copy of the claim and a notice stating the name and address of the person whom he selects as arbitrator, and he must serve a copy of the notice on the Minister, who must then within the same period file a notice giving the name and address of his arbitrator, a copy of which must be served on the owner. If either party fails to appoint an arbitrator the Supreme Court may make an appointment.

All claims shall be determined by the Compensation Court, which shall consist of the two arbitrators appointed by the Minister and the owner

respectively and an umpire, who shall be such judge of the Supreme Court as the Governor may from time to time appoint. The Court has full power to decide what lands may be acquired and what retained and what sum is to be paid by way of compensation, and it may give any other decision which is necessary for the purpose of adjusting the rights of all persons interested. Up to the date of the separate award as to the amount of compensation the Minister may discontinue the action on condition of paying to the claimants their costs and expenses, including any loss directly or reasonably caused by reason of the requisition and the proceedings under it. In determining the amount of compensation in respect of land taken or injuriously affected by the taking of other land, the Court shall have regard only to the capital value of the land at the date of the publication of the requisition; that is to say, the sum which the fee simple of the land might be expected to realise at the time of valuation if offered for sale on such reasonable terms and conditions as a *bonâ fide* seller might be expected to require. The award of the majority of the Compensation Court shall be final and conclusive, and shall not be reconsidered by the Supreme Court or any other Court. Within one month after the expiration of twenty-one days after the making of the award, the Government shall proclaim that the land in question is compulsorily taken under the Act, whereupon the land shall, *ipso facto*, be absolutely vested in His Majesty for an estate in fee simple in possession free from all other estates and interests of any kind. From the date on which effective occupation is given up to the Crown the compensation money shall be payable. At any time before the publication of the Governor's proclamation the owner may give notice in writing to the Minister that he elects to remain for a period not exceeding twelve months in possession of the land to be specified in the proclamation, and he shall thereupon be permitted to occupy it for the period so stated, but the compensation money shall not be payable until he vacates the land; the Minister and persons authorised by him shall be permitted to enter the land for the purpose of survey, road-making, or inspection; the owner shall keep the land and buildings in good and substantial condition and repair and shall insure all buildings in the name of the Minister and shall pay all rates, taxes, and out-goings and not assign or sub-let the land without the permission of the Minister or plough any part which is laid down in grass. If he fails to observe any of these conditions then, in addition to any other rights of the Crown, he shall be liable to pay a rent of 5 per cent. calculated on the amount of the compensation money.

Agent-General.—Act No. 16 empowers the Governor in Council to appoint an Agent-General for Tasmania for a period not exceeding three years from the date of his appointment, with eligibility for reappointment. The Agent-General may be removed at any time by the Governor in Council for misbehaviour or incapacity or upon a joint address of both Houses of Parliament. He shall act as representative and resident agent of Tasmania

in the United Kingdom and carry out such instructions as he receives from the Premier respecting the commercial, financial, and general interests of Tasmania in the United Kingdom and elsewhere. The salary of the Agent-General shall be £1,000 a year, and he is authorised to appoint officers subject to confirmation by the Governor in Council. Such officers shall not be subject to the Public Service Act, 1905,¹ and no officer so appointed shall be entitled to any compensation by reason of the loss of his office or diminution in his emoluments.

Oaths.—Act No. 17 amends the Evidence Act, 1910,² by discontinuing the practice of a person sworn according to the English form of oath kissing or touching the Bible or Testament; instead, the person tendering the oath shall hold the Bible or Testament in his hand, and the person taking the oath shall say, "I swear," to signify his taking the oath.

Companies.—Act No. 20 amends the Foreign Companies Amendment Act, 1905,³ by extending the power of foreign companies, being trustees and executor companies, in regard to holding land in Tasmania. Such companies if formed under the laws of some part of His Majesty's dominions other than Tasmania may now deal fully with any land in Tasmania comprised in any conveyance or devised by will or codicil made in the place in which the company is established.

Land Act.—Act No. 33 amends the Settled Land Act, 1884, so as to increase the powers of tenants for life with regard to making leases and selling on credit terms. Power is also given to enable the tenant for life to raise money by mortgage.

Road Rates.—Act No. 37 provides for the payment of subsidies to municipal councils which have levied a general road rate of not less than 1s. in the £ for the year 1911. The amount payable shall be the sum produced by multiplying the total annual value of rateable properties within the municipality by the rate in the £ which is set out in the schedule to the Act. The subsidy payable shall be expended towards the construction, repair, and maintenance of roads, streets, bridges, and jetties, and if the Minister in any case informs the council, on the recommendation of the Engineer-in-Chief, that an important road requires maintaining or repairing, the council shall repair the road, and, if not, the Minister may retain so much of the subsidy remaining unpaid as he considers necessary.

Department of Agriculture.—By Act No. 42 the administration of the following Acts is assigned to the Director of Agriculture: The Contagious Diseases (Cattle) Act, the Diseased Animals Importation Prevention Act, the Californian Thistle Act, the Codlin Moth Act, the Rabbits Destruction Act, the Vegetation Diseases Act, the Potato Diseases Act, and the Fruit-cases Act.

¹ No. 9 of 1905. See *Legislation of the Empire*, vol. ii. p. 76.

² No. 20 of 1910. See *Journal*, N.S. vol. xii. p. 412.

³ No. 35 of 1905. See *Legislation of the Empire*, vol. ii. p. 77.

Audit.—Act No. 53 amends the Audit Act of 1901¹ in a number of details. Provision is made that in the event of no Act being passed at the close of the financial year authorising the issue of moneys to meet the requirements of the next financial year, the Treasurer may pay such sums as may be necessary to meet requirements, but his authority shall not extend for a longer period than one month, and the payments which he makes must be on the same scale as those sanctioned in the Appropriation Act for the preceding financial year. If the estimates have been presented to Parliament, then if the rates contained therein are lower than those sanctioned by the Appropriation Act for the preceding year, payments must be made at the lower rates. As soon as possible after the close of every financial year the Treasurer shall prepare supplementary estimates of the expenditure during that year, and during the first month of the following financial year which are not covered by the authority of Parliament, and such supplementary estimate shall be submitted by the Treasurer to the Governor in Council and transmitted by the Governor to Parliament. By Part III. of the Act the Auditor of the State is made the auditor of all local authorities whose accounts are made subject to examination by the auditor. The auditor is authorised to surcharge all the members of any local authority which expends money without lawful authority who fail to satisfy him that the expenditure was incurred either without their knowledge or despite their protest. After surcharge he shall report to the Attorney-General, who shall take steps for the recovery of the amount of the surcharge as a debt due to the local authority.

Assessment.—Act No. 61 consolidates and amends the law relating to the assessment of the annual value of real property in Tasmania. The annual value is defined to mean the annual rental that could be reasonably demanded for the use and occupation thereof :

Provided that where any property is let at a rental, and the owner pays the rates and taxes (other than the land tax) in respect thereof, the annual value of such property shall be the rental payable for a year less the amount of such rates and taxes paid in such year :

Provided also that where any property is occupied by the owner thereof, the annual value shall be the annual rental that could be reasonably demanded for the use and occupation of such property if let to a tenant liable to pay the annual rates and taxes (other than the land tax) payable in respect thereof.

Provided also that the "annual value" of any property which is *bonâ fide* occupied or used for the purpose of obtaining therefrom any gold, silver, or other mineral or metal, or any earth, clay, quartz, or stone containing any gold, silver, or other mineral or metal, or having gold, silver, or other mineral or metal mixed therein, whether the same is Crown land held under lease or licence or the property of a subject, shall not be inclusive of the value of any gold, silver, or other mineral or metal extracted or which may be reasonably expected to be extracted therefrom.

¹ No. 15 of 1901. See *Legislation of the Empire*, vol. ii. p. 65.

Provided also that no rateable property shall be computed as of an annual value of less than £3 per centum upon the capital value of the fee simple thereof; and where the capital value of any such property is shown by any valuation roll for the time being in force under the Land Valuation Act, 1909,¹ such capital value valuation shall be used for the purposes of this proviso.

The Council of every district is required before October 1 of each year to assess all the property within the district. Tramways may be assessed at a sum not exceeding £100 per mile exclusive of the value of buildings which are used or occupied therewith. The Council may itself assess or appoint valuers, and it may adopt the assessments of its valuers with or without alteration. Valuers may call for whatever information is necessary, and failure to furnish a return is subject to a penalty of £5, and the making of a false return by a penalty of not less than £2 and not more than £10. A valuer, if dissatisfied with a return, may summon witnesses and examine them on oath. Appeals may be made from assessment in the first place to the Council and secondly to the Court of Appeal, which consists of any Commissioner appointed to hold a court of request under the Local Courts Act, 1906, if declared by notice in the *Gazette* to be a Court of Appeal. The Commissioner constituting the Appeal Court shall have the same power as a judge of the Supreme Court with regard to examining witnesses and so forth. The decision of the Court shall be final, and the onus of proof shall rest with the appellant.

Hobart Corporation.—Act No. 62 amends in several respects the Hobart Corporation Act. It is interesting to note that the appointment of a mayor is by ordinary ballot, the lowest candidate at each ballot being eliminated until the number of candidates is reduced to two, when a final ballot is held to decide who shall be mayor, unless two candidates are equal, when the matter is decided by lot. The Council of the Corporation is authorised to grant a sum not exceeding £100 a year to the Hobart Tourist Association.

Elections.—Act No. 63 amends the Electoral Act, 1907, in a large number of details, but it does not contain any important change.

Crown Lands.—Act No. 64 regulates the sale and disposal of the Crown lands in the State. It is in the main a consolidation, with amendments, of existing legislation. It is expressly provided that after the commencement of the Act the grant deed of any Crown land shall not convey property in gold, silver, copper, tin, or other metals or minerals, or other substance containing minerals or precious stones, or coal, or mineral oil, which are reserved to the Crown. Moreover, the Crown shall at all times have a right of constructing on or in the lands granted so many drains and waterways as may be deemed expedient. The sale by auction of Crown lands is still permitted. Rural lands must be classified as first, second, or third class after they have been surveyed and before sale. The lowest upset price of first-class land shall be

¹ No. 7 of 1909. See Journal, N.S. vol. xi. p. 386.

£1, of second-class land 10s., and of third-class land 5s. an acre. The actual upset is to be fixed by the Commissioner, but subject to variation by the Governor. Agreements not to bid at such auctions are penalised.

6. VICTORIA.

[*Contributed by C. J. ZICHY-WOINARSKI and W. HARRISON MOORE, ESQRS.*]

Acts passed: First session (being the fourth session of the twenty-second Parliament of Victoria), 36; second session (being the first session of the twenty-third Parliament of Victoria), 10.

Preferential Voting (No. 2321).—This Act introduces a system of preferential voting in the case of elections for the Legislative Assembly. Wherever there are more than two candidates, the elector is required to indicate on the ballot paper the order of his preference in the case of all the candidates, and failure to do this makes the paper invalid. The returning officers and their deputies are required in the first instance to make out certified lists of the first preferences, and if on adding these it is found that any candidate has received an absolute majority of the votes cast, he is elected. If no candidate has received such an absolute majority, the next step is to reject the candidate who has received the smallest number of first preferences, and to divert the papers on which a first preference is given to him to the other candidates in the order of the voters' preferences. This process is repeated until one candidate has received a majority of votes. The returning officer has a casting vote to determine which of two candidates who are equal shall be rejected as "a defeated candidate" for the purpose of carrying on the count.

Coroners (Act No. 2343).—This is an Act to consolidate and amend the law. The Act contains no novel or specially interesting provisions.

Flood Protection (No. 2345).—This Act, which is in continuance of a policy established in the Water Act, 1909,¹ provides for the constitution of flood protection districts under the superintendence of the State Rivers and Water Supply Commission, and for the construction and maintenance of such works as are necessary for carrying out the purpose of the Act. The authority is empowered to make a rate for its services upon lands within the district, or alternatively to establish an annual charge of uniform amount per acre sufficient to repay within a time to be specified by the Governor in Council the capital cost of works with 4 per cent. added, with an additional charge for maintenance.

Prince of Wales's Birthday Holiday Abolition (No. 2319).—The title explains the Act. The reason of the Act is that the proximity of the Prince

¹ See Journal, N.S. vol. xi. p. 391.

of Wales's Birthday to the King's Birthday causes inconvenience if both are to be observed as holidays.

Railway Service (No. 2329).—This Act is an Act of Oblivion for offences connected with the great railway strike of 1903. Many of the strikers who were dismissed the service have since been reinstated, but as there had been a breach in the continuity of their service, they had lost all accruing pension rights. These "inchoate rights to pension or compensation" are now restored. Moreover, any person dismissed and subsequently employed by the Commissioners as a supernumerary and now so employed is deemed to have been reinstated and is restored to any pension or compensation rights. Also, persons dismissed, subsequently reinstated, and now retired are restored to pension or compensation rights. Finally, where any person entitled to pension or compensation rights at the time of the strike has since died, the Governor in Council may give a gratuity to his dependent relatives, even if he was not reinstated or employed as a supernumerary.

Victorian Sanatorium for Consumptives (No. 2316).—In 1889 the Victorian Sanatorium for Consumptives was formed to aid in the prevention and cure of tuberculosis, and in 1904 it became incorporated. It became possessed of land in various parts of Victoria where it established sanatoria, and it acquired also by gift and legacy certain lands. Latterly it has not prospered, and now with its own consent its property and funds are taken over by the State, to be held for such provision as the Government may think fit to make in aid of any other institution in Victoria for the prevention and cure of tuberculosis.

Land Tax (No. 2327).—This Act continues for a year the tax of $\frac{1}{2}d.$ in the £ on the unimproved value of land in all cases where the owner's land exceeds £250 in value.

Land (No. 2332).—This Act deals with a number of matters of importance connected with the land settlement of the State. Part I. provides for "selection purchase leases" of Crown lands, applicable to lands made available for selection under various powers. The area that may be so selected varies from a maximum of 200 acres of first-class land to 960 acres of fourth-class land, and no person may select if the unimproved value of his land including that in the proposed selection amounts to £2,500. The leases may be issued either as residential or non-residential. Residential leases must contain covenants *inter alia* against assignment or incumbrance, for letting, taking cattle on agistment during the first six years without consent of the Board of Land and Works; to destroy vermin within two years and keep the land free of vermin for six years; to fence within six years and maintain fences; to occupy for six years; to effect improvements in accordance with a prescribed scale; conditions for sale in case of ill-health or death or insolvency of occupier, the sale to be to one who accepts the land on the terms on which it was granted; provision for resumption for railway, road, or mining purposes; covenant to keep in repair during six

years all buildings, fences, and improvements; covenants to insure, for entry of Crown officials to see if conditions are being observed, and for determination of the interest for breach of conditions.

At the close of the term of six years, the lessee or his representative may apply for a grant of the fee simple; and if the conditions of the lease have been duly performed, such grant may be issued "subject to such covenants, conditions, exceptions, and reservations as the Governor in Council may direct" (s. 11 (7)).

"Non-residential leases" may be issued to improve a selection purchase allotment of a period of twenty years on the like terms, save as to occupation and rate of rent. The area which may be disposed of under this Act by way of non-residential lease in any year is limited to 50,000 acres. Although lessees may not encumber the land, they may give a "lien" on their improvements, which on the expiration of the six years will become a charge on the land demised or granted (s. 16). This part of the Act is in lieu of the provision made in the Land Act, 1901, Part I. Div. 3, Sub-divs. 2 and 3, regarding the issue of licences and leases of agricultural or grazing allotments. Div. 2 of Part I. adapts the selection purchase lease to the "Mallee Lands" in substitution for the licensing and leasing provisions of Part II. Div. 1 of the Act of 1901. Part II. contains a number of miscellaneous provisions regarding licences and leases of "Mallee Lands," amongst them a significant provision for the preservation of all indigenous trees on not less than 3 per cent. of the area of the allotment; or in the alternative, of planting to the satisfaction of the Board of Land and Works (s. 34). In Part III. "Village Communities, Homestead Associations, and Labour Colonies," existing legislation is varied by numerous miscellaneous provisions, which appear to indicate a tendency to relax conditions of residence, non-assignment, etc. In Part IV., "General," we find relaxation of conditions of residence in case of prolonged ill-health or drought; provision that notwithstanding anything in the Forests Acts (which aim at the preservation of the forests in the general interest of the State) licences may be granted to any person to take live or dead timber from any Crown land not subject to any private right or reserved under the Forest Act, 1907.¹ S. 64 testifies to the growing sense of the importance of tree-planting, since it confers power on the Government where any road not less than three chains wide is Government property to set apart for tree-plantation so much as it thinks fit, provided that a width of one chain is retained for road purposes, and provided that the consent of the municipality and of adjacent owners has been obtained. S. 65 provides for the protection of timber-belts in the Mallee.

Administration and Probate Duties.—No. 2324 continues for a further period of twelve months (*i.e.* the period between December 31, 1911, and January 1, 1913) the existing rates of probate duty chargeable in Victoria on the real and personal property of deceased persons.

¹ See *Legislation of the Empire*, vol. ii. p. 157.

Administration and Probate (No. 2342).—This Act, in the first place, amends the principal Act dealing with the grant of probate or letters of administration in Victoria. The principal Act had facilitated the recognition by the Victorian Courts of probates and letters of administration granted by competent British Courts in the United Kingdom and in the Australian States. This present Act extends the privileges to such grants made in any British possession, subject, however, to the Governor in Council being satisfied that adequate provision has been made in the possession for the recognition of grants made by the Victorian Courts.

In the next place, this Act removes a cause of hardship that had been more or less prominent in the actual administration of estates by executors or administrators. It had happened that where executors or administrators had by published notice invited creditors of the estate to give notice of their claims, the creditors had contented themselves with making formal claims, but without proving them. This had at times been done in the hope that some compromise of unjust claims might be made, so as to enable the estate to be distributed amongst the beneficiaries. Until such claims are disposed of, the legal distribution may need to be postponed until the expiry of six years barred the claim. This now is remedied, and by this Act an executor or administrator, upon receiving notice of a claim, can himself give notice to the claimant to take proceedings to prove his claim within three months from the date of such last-mentioned notice (s. 3). After the three months, the executor or administrator may, upon notice to such claimant, apply to a judge of the Supreme Court for an order barring such claim, or making such other order as in the circumstances may seem just (s. 4).

Friendly Societies (No. 2317).—This is an Act which amends the principal Act, and ensures the sound financial position of these societies. By the principal Act, quinquennial valuations of the assets and liabilities of every such society needed to be made by the Actuary. It may happen that the rates of contribution of the members are adequate at one stage of a society's existence, but have become inadequate at a later stage, and so an increase in the rates may be necessary to enable it to provide the benefits it holds out to its members.

The Government Statist is therefore authorised, whenever it appears to him that a friendly society's rates of contribution are inadequate to fulfil its obligations, to notify the society of his opinion.

Thereupon the society is given a minimum period of three years (though by agreement such period may be reduced) from such notice to adopt other tables of contributions to ensure the financial well-being of the society. But if the society does not make any alteration, or any sufficient alteration, in its rates of contributions within such period of three years (or lesser period if agreed), the Government Statist again notifies the society, and on this occasion requires it to adopt tables of contributions certified by him to be adequate for the purpose, and to forward them to the Registrar of Friendly

Societies for registration by him. If the society fail to observe this second notification by the Government Statist within a period of twelve months from its receipt, the Government Statist is to report such omission to the Registrar, who thereupon is to cancel the registry of the society.

The Act makes provision for a special valuation being made at the cost of the society, apart from the quinquennial valuation of its assets and liabilities, for the purposes of the foregoing provisions of the Act, and it provides that if any such special valuation has, in fact, been made, the next valuation need not be made until five years after the date of the special valuation.

Matches (No. 2328).—Based upon the corresponding Act passed in 1906 in the State of New South Wales, this Act, like its prototype, authorises the Governor in Council to prohibit, during all or any of the months from November to April, except in mines, the sale, distribution, or use of certain matches, such as wax matches, in localities specified by the Governor in Council. A £10 penalty is provided for any contravention of the Act.

Methodist Church (No. 2344).—A measure similar in its terms to this Act has already been adopted in some of the States of Australia. The necessity for the Act arose from the fact that because the Dominion of New Zealand is situate so far from Australia, the General Conference of the Methodist Church which occurred in Australia was inconvenient for the attendance of the New Zealand Methodists. The Methodists in New Zealand had decided to withdraw from the Australasian Conference, and resolutions approving of this separation had been passed by the Methodists in the States of the Commonwealth of Australia and in the Dominion of New Zealand.

This Act, then, sanctions the constitution of the New Zealand Annual Conference of the Methodist Church as an independent Conference, and authorises the fixing of a date when such independence is to take effect, viz. after the sanction of the Parliaments of each of the Australian States and of New Zealand has been obtained, and after notice under the hand of the President for the time being of the General Conference duly published in the *Government Gazette*. Thereafter certain consequential alterations in the construction of certain Acts and documents are to be taken as made.

Mining Development (No. 2318).—The destination of certain moneys already authorised by Parliament to be spent in the development of the mining industry in Victoria is changed to some extent by this Act. Since the year 1896 certain maximum amounts had been authorised to be spent yearly by way of loan to companies mining for gold or for coal. The amount required for gold mining had been found to be underestimated, and the amount required for coal mining to be overestimated, and so this Act increases by £15,000 the expenditure by way of loans already authorised for the development of gold mining, and it decreases by the same amount the expenditure by way of loans already authorised for the development of coal and other mining.

It gives also to all private loans made to any such mining companies, whether secured or unsecured, a priority over the amount lent by the Government under this or any other of the Mining Development Acts.

Shearers' Hut Accommodation (No. 2341).—New South Wales and New Zealand have already stipulated in their legislation what shall be proper and sufficient accommodation for shearers employed on stations, and this Act does a like service for Victoria.

It does not apply to the shearing of sheep in any city, town, or borough, nor to cases where less than six shearers are employed at one time (s. 3).

Shearers' huts must be distant not less than fifty yards from the shearing shed, and be fitted with proper doors and glass windows, and must provide for—

- (a) Separate buildings for the sleeping accommodation of any persons of Asiatic race ;
- (b) for sleeping bunks not to be placed one above the other, and for not less than 240 cubic feet of air space to each sleeper and for approved tent accommodation ;
- (c) a separate sleeping place from that for the cooking and serving of meals ;
- (d) a separate dining place for Asiatics ;
- (e) sufficient latrine accommodation not less than 25 yards from the hut and not less than 50 yards from the water supply or storage ;
- (f) a sufficient supply of good drinking water ;
- (g) a meat-house or safe properly constructed against flies ;
- (h) a separate place for stores and rations ;
- (i) clean chaff and straw for the mattresses ;
- (j) proper kitchen vessels and utensils ;
- (k) sleeping and dining rooms to be lighted and ventilated ;
- (l) approved floors on sleeping and dining rooms (ss. 6 and 14).

The shearing sheds are to be kept clean by the shearers (s. 7).

Provision is made for the appointment of inspectors by the Governor in Council and for their duties and powers (ss. 5, 8, 10). Wherever the Act is not complied with the inspector may serve a notice on the employer to comply with its requirements, and upon default a Court of Petty Sessions is empowered to make any necessary orders and to impose penalties (ss. 9 and 11).

Employers, where six or more shearers are to be employed on any station, must, at least three days before the shearing is begun, notify the inspector of the district of that fact (s. 12).

Provision is also made for the apportionment as between landlord and tenant of the cost of expenses incurred by a person being tenant of a landlord, and being required to incur expenses in fulfilling the provisions of the Act, but such statutory apportionment is not to apply in the case of

any express agreement between landlord and tenant as to such expenses (s. 15).

Teachers (No. 2330).—Most of the provisions of this Act, which is mainly a machinery Act, deal in detail with the classification and increase in remuneration of the junior teachers in the State schools. The disinclination of teachers in the State schools in big city centres to go forward to appointments to country schools is dealt with also, and the effect of a refusal to take up such a position may be dismissal, unless the teacher, if a female teacher, satisfies the classifiers that the position is one which it would not be fit and proper for a female teacher to accept, or that there are good and sufficient reasons for not requiring her to take up such position; or if a male teacher satisfies the classifiers that in his case there are exceptional circumstances under which he should not be required to take up such position, and in any case where the classifiers are so satisfied they have to furnish the Minister with a written report of their decision stating their reason for it (s. 16).

The Director of Education is required to cause separate accounts to be kept of the cost and charges incurred in connection with education divided under the headings: Primary Education, Higher Elementary Schools, High Schools, Agricultural High Schools, Technical Schools, Schools for Defectives, and submit explanatory statements of same in his annual report to Parliament (s. 17).

7. PAPUA.

[Contributed by LITTLETON E. GROOM, ESQ., *Member of the Australian House of Representatives.*]

Ordinances passed—30.

The Ordinance Interpretation Ordinance, 1911 (No. 7), repeals the Acts Shortening Act, 1867 (Queensland adopted), and the Interpretation Ordinance of 1891. It is an Ordinance for the Interpretation of Ordinances and for shortening their language. It follows the provisions of the Commonwealth Acts No. 2 of 1901 and No. 1 of 1904. In view of the frequency of the use of the term "native" in the legislation of the Territory the definition thereof is important. "'Native' shall mean and include any aboriginal native of New Guinea, or of any island adjacent thereto, or of any part of the Territory, and also every aboriginal native of Australia, or any island adjacent thereto, and also every aboriginal native of any island in the Pacific Ocean, or of any of the East Indian Islands, or of Malaysia that shall, whilst he is in the Territory, live after the manner in which aboriginal natives of New Guinea or the islands adjacent thereto live; and also every person that is wholly or partly descended from any aboriginal natives or native aforesaid, and that shall, whilst he is in the Territory, live after the manner in which aboriginal natives of New Guinea or the islands adjacent thereto live."

Children.—During the year several consolidating Ordinances have been

passed. The Native Children's Ordinance, 1911 (No. 8), consolidates and amends the law relating to the provision for the custody of native children. The Ordinance applies to a child commonly reputed to be the offspring of parents both or one of whom is a native, and not over fourteen years of age (s. 4). A mandate may issue in regard to a child convicted of an offence against any law of the Territory; or who is proved to have committed such an offence; or who is an orphan or deserted by its relatives; or either of whose parents are in gaol under a sentence of imprisonment for twelve months or more, and who is neglected or insufficiently cared for; or who has been deserted by either of his parents; or either of whose parents is dead, and the child is neglected or insufficiently cared for (s. 5). The Lieutenant-Governor may issue a mandate in the case of any child coming within any of these descriptions (s. 6). The mandate may direct that the child be taken to a Christian mission station to be there detained in the custody of the person in charge; or to any Government, State, public establishment or vessel to be there detained in the custody of the public officer in charge; or to the residence of any private person to whose care and custody the child may have been entrusted (s. 7). The duties of the person in charge of the child are specified (ss. 9, 10). No child shall be affected by a mandate after he has attained the age of eighteen years (s. 22).

Native Labour.—The law relating to native labour has been consolidated and amended by the Native Labour Ordinance, 1911. Very elaborate provisions have been made to protect and safeguard native labourers. This Ordinance is divided into twelve parts, and deals with the restrictions on the employment or removal of natives; recruiters and recruiting; the engagement of natives; the cancellation, alteration, and determination of contracts of service; the permitted removal of natives within and beyond the Territory; the obligations incurred by persons employing or removing natives; the payment and recovery of wages; the inspection of vessels and of native labourers; the suspension of contracts of service; epidemics and offences.

Land.—Under the Commonwealth statute which gives Papua its constitution the Crown is forbidden to alienate land in fee simple. The Land Ordinances of the Territory have given full effect to the leasehold principle. The Land Ordinance, 1911, consolidates all previous enactments on this subject, and makes several alterations in the law. The Act is divided into four parts. Part I. deals with the acquisition of lands from the natives. Save as in the Ordinance is provided, a native has no power to sell, lease, or otherwise dispose of land (s. 3). If the native owners are willing to dispose of any land the Lieutenant-Governor may purchase or lease it; but it is not lawful for him to purchase or lease any land until he has become satisfied that the land is not required or likely to be required by the owners (s. 5). The Lieutenant-Governor may also repurchase lands held by grant from the Crown (s. 7). The Lieutenant-Governor may take possession for the Crown

of any land which has never been alienated by the Crown, and of which there appears to be no owner (s. 8).

Part II. deals with leases by the Crown. No estate in fee simple or other estate of freehold can be granted of any Crown land ; but leases may be granted in the manner provided by the Ordinance. The leases granted may not be for any period exceeding ninety-nine years, unless a lesser maximum is provided in respect of any particular classes of leases (s. 10). A Land Board is appointed by the Lieutenant-Governor consisting of three members, one of whom must be the officer administering the Department of Lands. Applications for leases and all other applications, which under the Ordinance must be decided by the Lieutenant-Governor, have to be considered first by the Board (s. 16). All lands in the Territory, except land in townships and land which has been alienated by the Crown, must be classified according as they are or are not suitable for agriculture (s. 17). The unimproved value of the land which has not been alienated must be assessed. The assessment is the basis on which rents are determined. The unimproved value of a piece of land is taken to be the sum which the land might reasonably be expected to realise if all the improvements on the land were removed, and it were sold without them (s. 18). The Ordinance sets forth the terms and conditions upon which agricultural, pastoral, town allotment, business, mission, residence, and other leases are granted. In the case of an agricultural lease for more than thirty years the rent is determined at 5 per cent. per annum of the unimproved value of the land, but no rent is payable for the first period of ten years. The rent must not exceed 6*d.* per acre per annum during the next ten years. The unimproved value of the land is appraised every twenty years during the currency of the lease, and the rent determined accordingly. In the case of a lease for thirty years or less rent is payable for the whole time at the rate of 5 per cent. per annum on the unimproved value ; but the rent must not exceed 6*d.* per acre per annum during the first ten years. At the end of every ten years during the currency of the lease the unimproved value is appraised, and the rent determined (s. 25). In the case of a pastoral lease for more than thirty years the rent is determined at $2\frac{1}{2}$ per cent. per annum of the unimproved value of the land. No rent is payable for the first ten years, and not more than 10*s.* per annum for every thousand acres during the second period of ten years. The unimproved value is appraised every twenty years, and the rent determined accordingly. If the lease be for thirty years or less rent is payable during the whole time at the rate of $2\frac{1}{2}$ per cent. on the unimproved value ; but the rent must not exceed 10*s.* for every thousand acres during the first ten years. At the end of every ten years during the currency of the lease the unimproved value of the land is appraised, and the rent determined accordingly.

Part III. deals with the reservation and acquisition of land for public purposes. Part IV. contains some general provisions.

Protection of Birds.—The Birds Protection Ordinance, 1911 (No. 9), consolidates and amends the law relating to the protection and collection of birds. It is not lawful to capture or wilfully destroy a bird of any of the kinds enumerated in the schedule, or proclaimed; or to buy or sell or deal in any such birds or the skins, feathers, or plumage thereof, or to export any such bird or the skins, feathers, or plumage thereof (s. 3). The Lieutenant-Governor may authorise the issue of special permits to capture or destroy prohibited birds. Special permits shall only be issued to the accredited agent of a Government, or a museum, zoological or acclimatisation society, or other scientific institution, and who is a holder of a licence to collect birds under the Ordinance (s. 9). Prohibited birds and their skins, feathers, and plumage destroyed under the authority of a special permit may be exported (s. 10). No person shall collect birds unless he holds a licence to collect them under the Ordinance (s. 12). No licence to collect shall authorise the holder thereof to destroy or capture any prohibited bird. The prohibited birds enumerated in the schedule are: birds of paradise, Goura pigeons, ospreys.

Coroners.—The law relating to Coroners has been amended and consolidated by the Coroners Ordinance, 1911 (No. 15). Each and every magistrate and every Justice of the Peace are declared to be coroners for the Territory (s. 3). Every coroner has jurisdiction to inquire concerning the manner and cause of the death of any person who is slain or who is drowned or who dies suddenly or under any suspicious or unusual circumstance or in prison, or while detained in any lunatic asylum, and to inquire into the cause and origin of any fire, whether a bush fire or other fire whereby any building, ship, merchandise, or any stack of corn or hay or any growing crop, standing trees, or any other valuable effects shall be endangered, destroyed, or damaged (s. 4). All inquests of death or concerning the cause or origin of a fire shall be held before a coroner sitting alone (s. 5). The Ordinance sets out the procedure as to the holding of the inquests, and the proceedings upon inquisition charging a person with murder, manslaughter, or arson. Wide powers to punish for contempt are conferred upon the coroner (s. 16).

Pearls.—The Pearl, Pearl-shell, and Bêche-de-Mer Ordinance, 1911 (No. 19), repeals all the Ordinances from 1891 to 1908 and forms a consolidating as well as amending Ordinance. It is not lawful to use or employ any ship or boat in the pearl-shell or bêche-de-mer fishery within the Territory or within one league to seaward from any part thereof unless such ship or boat is duly licensed (s. 6). No ship or boat shall be licensed to be employed in such fishery unless owned wholly by (a) natural-born British subjects; (b) persons naturalised by or in pursuance of an Act of Parliament of the United Kingdom or an Act or Ordinance of the proper legislative authority in a British possession; (c) persons made denizens of the Territory or of the Commonwealth of Australia by letters of denization; (d) bodies corporate established under and subject to the laws of some part of His Majesty's dominions (s. 7). The necessary machinery is enacted to give effect to the

above sections. Provisions are made for the registration of persons having an interest in any ship or boat engaged in the fishery, and of agreements relating to leasing or hiring of such ships or boats (s. 9) ; and for the grant of a licence to any ship or boat to be employed in the pearl-shell and bêche-de-mer fishery. Other clauses deal with the employment of natives (s. 31), the minimum size of pearl-shell that may be taken (s. 32), the closing of fishing banks (s. 32), the appointment of inspectors (s. 38) and the definition of their powers (s. 39), the use of gear and tackle (ss. 42, 43), the specifying of ports for the export of shell (s. 45), and the licensing of buyers of pearls (ss. 48, 49).

Intoxicating Liquors.—The Liquor Ordinance, 1911 (No. 20), repeals the several Liquor Ordinances and constitutes a consolidation of the law regulating the sale of intoxicating liquors. The Liquor Ordinance, 1911, No. 2 (No. 29), amends several sections of the principal Ordinance.

Protection of Natives.—The Arms, Liquor, and Opium Prohibition Ordinance, 1911 (No. 27), is an Ordinance to amend and consolidate the law prohibiting the supplying to natives of firearms, ammunition, explosives, intoxicating liquor, or opium. A new section has been inserted setting forth the conditions under which a native may be entrusted with any firearm, ammunition, explosive, or intoxicating liquor entrusted to him for the purpose of immediate transport.

Diseases of Plants.—The Plant Diseases Ordinance, 1911 (No. 28), repeals the Plant Diseases Ordinance of 1892. The purpose of the Ordinance is to prevent the introduction and to provide for the eradication of diseases affecting vegetation.

Diseases of Animals.—The Animals Prohibition and Restriction Ordinance, 1911 (No. 17), amends and consolidates the enactments relating to the prohibition and prevention of the introduction of certain animals into the Territory and the checking of diseases in animals. That part of the Ordinance which deals with prohibited animals prohibits the introduction into the Territory of rabbits, foxes, hares and monkeys (s. 3). No person is allowed to have in possession or knowingly keep on his premises any prohibited animal (s. 4). The second part deals with restricted animals. No animals except domestic animals shall be introduced into the Territory without the consent in writing of the Lieutenant-Governor (s. 8). The Lieutenant-Governor may, by proclamation, prohibit or put restrictions on the introduction or importation of any animals or of any one or more kind of animals into the Territory or any district thereof from such places and during such time as may appear necessary, and may prohibit or put restrictions on the removal of any animals or any one or more kind of animals from one portion of the Territory to any other portion of the Territory (s. 9). The subsequent sections provide the machinery for giving effect to the above enactments.

Aliens.—The Aliens Ordinance, 1911 (No. 26), repeals the Aliens Act of 1867 (Queensland adopted). It enacts that real and personal property of every description may be taken, acquired, held and disposed of by an alien in

the same manner in all respects as a natural-born British subject, and a title to real and personal property of every description may be derived through, from, or in succession to an alien in the same manner in all respects as if he were a natural-born British subject (s. 3).¹ Provision is made for the naturalisation of aliens. These sections follow the Commonwealth Act, No. 11 of 1903.

Hospitals.—The Public Hospital Ordinance of 1911 (No. 25) repeals the Public Hospitals Ordinance of 1898. It provides for the establishment of public hospitals, their management and the appointment of necessary medical and nursing staffs. A new provision is made that the Lieutenant-Governor may appoint "such district nurses as he thinks fit for the purpose of attending sick persons elsewhere than in a public hospital." Another provision, which is new, is the clause empowering the Lieutenant-Governor to appoint a Board of Advice for any public hospital.

Defamation.—The Defamation Ordinance, 1911 (No. 14), amends the law relating to defamation as an actionable wrong. It repeals the Act (Queensland adopted), 11 Vict. No. 13. The unlawful publication of defamatory matter as defined in the Criminal Code of the Territory for the time being is made an actionable wrong (s. 4). This Ordinance is, in the main, based on the Queensland Statute, 53 Vict. No. 12.

Miscellaneous.—Other minor Ordinances passed were: Auctioneers Ordinance, 1911 (No. 11), dealing with the licensing of auctioneers in the Territory; Bankers' Books Evidence Ordinance, 1911 (No. 10); Currency Ordinance, 1911 (No. 13), which enacts that a tender of payment of money if made in coins which are legal tender in Australia under any law for the time being in the Commonwealth of Australia shall be a legal tender in the Territory; Survey Marks Ordinance, 1911 (No. 16), which relates to survey marks to be used on surveys conducted for the Government; Public Officers' Fees Ordinance, 1911 (No. 18), requiring fees received by public officers to be paid into the public revenue; Customs Duties Amending Ordinance, 1911 (No. 21), fixing the duties on crude petroleum, residual oil, and other liquid fuel (not capable of being used as an illuminant) at the rate of $\frac{1}{2}d.$ per gallon; and the Claims by and against the Government Ordinance, 1911, consolidates and amends the law relating to claims by and against the Government of the Territory of Papua.

8. DOMINION OF NEW ZEALAND.

[Contributed by JAMES CHRISTIE, ESQ., LL.B., Barrister and Solicitor
of the Supreme Court of New Zealand.]

During the session which commenced on July 27, 1911, and ended on October 29 of the same year, thirty-seven Public and General Acts and forty-

¹ Cf. 33 & 34 Vict. c. 14, s. 2.

three Local and Personal Acts were passed by the General Assembly of New Zealand. Of this legislation, by far the greater part related exclusively to matters of purely local concern ; and the following review deals only with those Acts which are deemed to be of some general interest.

Friendly Societies.—The Friendly Societies Amendment Act, 1911, No. 5, amends the Friendly Societies Act, 1909,¹ as follows :

(1) S. 2 prohibits the registration of a friendly society or branch after January 1, 1912, until an approved actuarial certificate has been given that the benefits promised to members are adequately secured by the rates of contribution set forth in the proposed rules.

(2) S. 3 amends the provisions of the principal Act as to the investment of the funds of friendly societies by way of mortgage of lands. It permits of advances up to, but not exceeding, two-thirds of the value of the security offered ; under the principal Act advances were limited to amounts not exceeding three-fifths of the unimproved value of the land, together with half the value of the improvements thereon.

Lunacy.—The Mental Defectives Act, 1911, No. 6, repeals the Lunatics Act, 1908, which was merely a consolidation of the Lunatics Act, 1882, and certain minor amendments thereof. The Act of 1882 was, to a large extent, adapted from the law in force in England prior to that date, and with comparatively little alteration has remained the law in force in New Zealand to the present time. The present Act (which is largely in conformity with the recommendations of the Imperial Royal Commission on the Care and Control of the Feeble-minded, which reported in 1908) is much more extensive in its operation than the earlier law, which dealt exclusively with “lunatics”—that is, with persons who were “idiots or of unsound mind, and incapable of managing themselves or their affairs.” The term “lunatic” has been dropped, and the more comprehensive and less repugnant term “mentally defective person” has been substituted. The expression “mentally defective person” is defined as “a person who, owing to his mental condition, requires oversight, care, or control for his own good or in the public interest.” The definition further classifies “Mentally defective persons,” as recommended by the Commission aforesaid, into the following divisions : Class I. Persons of unsound mind ; Class II. Persons mentally infirm ; Class III. Idiots ; Class IV. Imbeciles ; Class V. Feeble-minded ; Class VI. Epileptics.

Persons coming within any of these classes and requiring “oversight, care, and control for their own good or in the public interest” are liable to detention in an institution under the Act, during the continuance of their condition of mental defectiveness.

The following is an outline in brief of the main provisions of the Act :

(1) Part I. determines the procedure to be adopted for the reception of

¹ No. 12 of 1909. See Journal, N.S. vol. xi. p. 406.

mental patients into institutions under the Act. Detention is lawful only on the authority of a reception order by a magistrate, supported by two independent medical certificates; although in cases requiring urgent attention, the superintendent of an institution may first receive a patient, and then take the necessary steps to obtain the magistrate's order and the medical certificates.

(2) Part II. deals with "single patients"—that is to say, persons who, on examination by the magistrate and by two medical practitioners as aforesaid, are directed by the magistrate to be detained in the house of, and under the control of, some private person. In such cases, provision is made for the supply of regular medical attendance to that patient during his detention.

(3) Part III. relates exclusively to the special procedure to be adopted in the case of the committal to an institution of minors. In such cases application is made by the parent or guardian, supported by two medical certificates, to the Inspector-General of Mental Defectives. Any person detained under this Part may be discharged from an institution on an application in that behalf by the parent or guardian, and shall, on attaining the age of twenty-one years, be so discharged unless an order for his further detention is made by a magistrate.

(4) Part IV. This part relates to mentally defective persons charged with criminal offences.

(5) Part V. relates to "Voluntary Boarders," and is an important departure from the earlier law. It permits of the detention of a person in an institution on his personal application to be placed under control and treatment. Such a patient may be released on his own application in that behalf, the only restriction being that he may be detained for seven days after the receipt of his application for discharge. This provision is designed to meet cases where a person, being aware of an impending attack of insanity, wishes to effectively place himself beyond the risk of inflicting harm on himself or others.

(6) Parts VI. and VII. relate to the effective administration of public and licensed institutions for mentally defective persons, and for the treatment and control of the persons detained therein.

(7) Part VIII. provides for the administration by the Public Trustee of the estates of persons detained as mentally defective under the provisions of the Act.

(8) The remaining provisions create certain offences, and make various general provisions for the effective carrying out of the Act.

Administration.—The Administration Amendment Act, 1911, No. 8, makes the following amendments of the Administration Act, 1908:

(1) S. 2 exempts the Imperial Public Trustee from the obligation to give security on the resealing in New Zealand of letters of administration.

(2) S. 3 authorises an administrator to call upon any claimant against an estate to institute legal proceedings in respect of a disputed claim within

three months of the rejection of that claim. If such proceedings are not commenced within the time limited, the Supreme Court may bar the claim.

(3) S. 4 provides that, upon the filing in the Supreme Court of applications for the administration of estates by persons other than the Public Trustee, the following information shall be supplied to the Public Trustee :

- (a) Date of filing and of hearing ;
- (b) Name of deceased ;
- (c) Whether the deceased died testate or intestate, and date of will (if any).

This provision is rendered necessary by reason of the increase in the work of the Public Trustee in respect of the preparation and custody of the wills of private persons.

Death Duties.—The Death Duties Amendment Act, 1911, No. 9, extends the exemptions under the Death Duties Act, 1909,¹ in respect of gift duty and succession duty. S. 8 provides that no duty shall be payable on any gift which (together with any gift made within twelve months by the same donor to the same beneficiary) does not exceed £1,000. The former exemption was in respect of gifts of £500, made within six months. S. 10 exempts from the payment of succession duty successions not exceeding £200 in value.

S. 7 provides that, for the purposes of the principal Act, the local situation in the United Kingdom of any property shall be determined in accordance with the law of England with regard to the local situation of property, within the meaning of s. 20 of the Finance Act, 1894² (Imperial).

Advances to Workers.—The New Zealand State-Guaranteed Advances Amendment Act, 1911, No. 13, authorises the expenditure by the Government of £750,000 instead of £500,000 per annum by way of advances to workers, for the purpose of facilitating the acquisition by those workers of homes for themselves and their families.

Old Age Pensions.—The Old Age Pensions Amendment Act, 1911, No. 14, includes an important extension of the principal Act in s. 4, which provides for a pension (not exceeding £39 per annum) at the age of sixty years in the case of a man, or of fifty-five years in the case of a woman, if the applicant for the pension has two or more children under fourteen years of age dependent on him or her. Under the principal Act the maximum pension is £26 per annum, and the minimum pension age is sixty-five years.

Government Loans.—The Aid to Public Works and Land Settlement Act, 1911, No. 15, authorises a loan of £1,500,000, to be allocated as follows : (1) Construction of railways, £500,000 ; (2) purchase of rolling-stock

¹ No. 10 of 1909. See Journal, N.S. vol. xi. p. 406.

² 57 & 58 Vict. c. 30.

£300,000; (3) land settlement and goldfields development, £500,000; (4) other public works, £200,000.

Widows' Pensions.—The Widows' Pensions Act, 1911, No. 16, authorises the payment of pensions to widows in indigent circumstances, having dependent upon them a child or children under the age of fourteen years.

The rates of pension are as follows: (a) To a widow with one such child, £12 per annum; (b) to a widow with two such children, £18; (c) to a widow with three such children, £24; (d) to a widow with four or more such children, £30. The rates above specified are subject to a deduction of one pound for every pound of the annual income of the widow in excess of £30. Personal earnings, however, are not deemed to be income unless (and only to the extent to which) they exceed (together with a pension under the Act) the sum of £100.

The right to receive a pension is not absolute, but is subject to the good moral character and sober habits of the pensioner.

S. 18 permits payments to be made to a person other than the pensioner, in trust for her and her children, if for any reason (e.g. the age, infirmity, or improvidence of the pensioner) the Commissioner administering the Act thinks it advisable that personal payments should not be made. A pension under the Act is declared by s. 27 to be inalienable by way of assignment, charge, execution, bankruptcy, or otherwise howsoever.

Patents.—The Patents, Designs, and Trade Marks Act, 1911, No. 17, repeals the Patents, Designs, and Trade Marks Act, 1908 (with the exception of certain sections relating to offences in respect of trade marks), and adopts with certain modifications the Imperial and Commonwealth (Australia) Acts relating to the same matters.

The following are the most important of the material alterations of the law effected by the new Act:

S. 29 enables the Supreme Court to make an order permitting the manufacture or carrying-on in New Zealand of a patented article or process on being satisfied that the patentee is not causing that article or process to be manufactured or carried on to an adequate extent in New Zealand. No such order is to be made within four years of the date of the patent, nor does it authorise the importation into New Zealand of a patented article in breach of the provisions of the patent.

S. 40 makes more stringent the prohibition of contracts by which the purchaser, lessee, or licensee of a patented article or process is restrained from using or purchasing any article or process not the property of the patentee. Such contracts and others of a similar character are declared to be null and void as being in restraint of trade and contrary to public policy.

More effective provision is made by ss. 26 to 29 compelling a patentee to issue licences with respect to patented inventions, or, in the alternative, for the revocation of those patents.

Designs.—Under the Act of 1908 the copyright in a design expired five

years after registration: the present Act permits of two renewals, each of five years, thus allowing a total period of fifteen years during which the design may be protected.

Elections.—The Local Elections and Polls Amendment Act, 1911, No. 20, authorises an elector at a local election to record his vote after the close of the poll if he was present in the voting-place for the purpose of voting before the hour fixed for closing.

Public Works.—By the Public Works Amendment Act, 1911, No. 21, provision is made for the execution of irrigation agreements between the Minister of Public Works and the occupier or owner of land in districts where the Minister has constructed irrigation works under the powers conferred upon him by earlier legislation. Such agreements run with the land in respect of which they are made, either during the currency of the lease of the land to which they relate or until the expiration of the agreement by effluxion of time.

Wireless Telegraphy.—The Post and Telegraph Amendment Act, 1911, No. 24, provides (*inter alia*) for the issue of licences by the Minister of Telegraphs for the installation of wireless telegraphy apparatus on ships registered in New Zealand.

Public Reserves.—The Public Reserves and Domains Amendment Act, 1911, No. 25, extends the leasing powers of local authorities and trustees in respect of public reserves vested in them. It authorises the execution of leases for twenty-one years with a single right of renewal for a further period of twenty-one years.

Mines.—The Mining Amendment Act, 1911, No. 32, makes various amendments of the Mining Act. In particular, the provisions of that Act are extended so as to apply to the prospecting and mining for, and to the storage of, mineral oils and natural gases.

Industrial Arbitration.—The most important amendments effected by the Industrial Conciliation and Arbitration Amendment Act, 1911, No. 33, are the following:

(1) S. 3 makes provision for an industrial agreement being transformed by the Court into an industrial award in cases where that agreement is binding on the employers who employ a majority of the workers in the industry to which it relates.

(2) S. 4 provides for the extension of an award to two or more industrial districts; and s. 6 provides for the making of Dominion awards, the operation of which extends throughout the whole of New Zealand.

Workmen's Compensation.—The Workers' Compensation Amendment Act, 1911, No. 34, extends the benefits of the principal Act to persons employed in domestic service, in cases where the employment or engagement is for a period of not less than seven days.

Shipping.—The Shipping and Seamen Amendment Act, 1911, No. 35, repeals and re-enacts with necessary modifications the provisions of s. 119 of

the principal Act, relating to the liability of the owners, masters, and agents of ships with respect to the maintenance and care of seamen left on shore in New Zealand by reason of illness or accident.

S. 9 of the amendment further enacts that bills of lading or other documents relating to contracts for the carriage of goods from New Zealand are to be governed by the law of New Zealand for the time being in force, notwithstanding any agreement to the contrary by the parties.

This Act has been reserved for the signification of His Majesty's pleasure thereon.

9. FIJI.

[Contributed by the HON. ALBERT EHRHARDT, K.C., *Attorney-General*.]

Ordinances passed—30.

Customs Duties.—No. 1 raises all *ad valorem* duties from 12½ to 15 per cent., substitutes an *ad valorem* for a specific tax on cotton goods, cornflour, farinaceous foods, and brick-oil, and reduces the protective duty on “kava” from 4*d.* to 1*d.* per lb. No. 14 raises the duties on certain articles of luxury such as beer and tobacco. No. 26 repeals and consolidates previous legislation relating to customs duties with only slight alterations of substance.

Customs Regulation.—No. 3 renders it clear that goods imported for the use of an officer administering the Government other than the Governor are exempt from customs duties only when the Governor is beyond the limits of the Colony. No. 9 makes provision for the appointment of custom house agents. No. 23 restores to the Receiver-General many powers and duties which had previously been transferred from that officer to the Collector of Customs.

Taxation.—No. 12 imposes a subsidy and inspection tax on all bananas exported from the Colony of one ½*d.* per bunch and 1*d.* per case. No. 21 imposes a tax on all buildings and huts within the Colony. A “hut” is defined as a building or erection intended for human habitation, the annual value of which does not exceed £10. A “building” means any house, warehouse, shop, mill, factory or other premises erected outside the boundaries of a town with certain exceptions. The tax on a hut is 10*s.*, that on a building is such an amount as the Governor in Council may determine not exceeding 2*s.* in the pound of the annual value thereof. The fixtures and machinery in a building are taken into account for the purpose of ascertaining its annual value, but the land attached to it is excluded. No. 20, the Stamp Amendment Ordinance, increases the stamp duty on leases which varies according to the term demised. No. 18 consolidates and amends legislation relating to certain licences imposed for revenue purposes.

Liquor.—No. 17 consolidates and amends the law relating to the sale of

spirituous liquors, *i.e.* any liquid used for drinking which contains more than 2 per cent. of proof spirits. Licences are required, and are of the following kinds: wholesale, packet, publicans', and booth or stand licences. All licences are to be issued by European stipendiary magistrates, and are liable to objection. With regard to wholesale licences, provisions are made as to the place of storage, and for the keeping of a record of sales. Part II. of the Ordinance deals with the supply of liquor to natives, which is forbidden except in exceptional cases, and the issue of prohibition orders against persons—Europeans and others—of confirmed intemperate habits. No. 29 gives the Governor power to exempt ocean-going steamers from the provisions of the Liquor Ordinance relating to packet licences.

Public Health.—No. 28 is a consolidating Ordinance of a somewhat elaborate character. It consists of nineteen parts and 117 sections. A Central Board of Health is established; power is given to divide the Colony into rural and urban sanitary districts; local authorities are established for the sanitary districts subject to the general powers of the Central Board as to supervision and control. Parts II. to V. deal with building areas, dwelling-houses, privies, and scavenging. Part VI. deals with nuisances, for dealing with which magistrates are empowered to make abatement, prohibition or closing orders or a combination of those orders, subject to appeal to the Supreme Court. Part VII. treats of "infectious diseases," which are enumerated in s. 54. Provision is made for hospitals or camps, and power is given to the Board to order the segregation of persons suffering from infectious diseases. The notification of infectious diseases is made compulsory. Infected persons are not to engage in any occupation unless they can do so without risk of spreading disease (s. 61). Provisions are also made as to the disinfection of clothes, other articles, and public conveyances. The remaining parts of the Ordinance give local authorities power to deal by by-laws and in other ways with specific matters such as offensive trades, sale of milk, water supply, common lodging-houses, mosquitoes, slaughter-houses, and laundries. No. 22 repeals previous legislation relating to quarantine, and substitutes provisions consistent with the Paris International Convention of 1903 to which the Colony has adhered. The alterations have generally been in the direction of relaxing the restrictions upon the movements of ships. No. 19, the Leper Ordinance, 1911, repeals previous enactments, and consolidates and amends the law as to lepers. Provision is made for the compulsory segregation of lepers, and their removal to leper asylums. The certificate of two qualified medical practitioners is made obligatory before a person may be treated as a leper.

Wharfage.—No. 16 is a consolidating Ordinance passed to remove certain ambiguities and anomalies in previous legislation. It lays down the conditions on which ships using a Government wharf shall be liable to tonnage duty, the imposition of wharfage dues on goods passing over a Government wharf, and the erection of private wharves.

Burial and Cremation.—No. 4 provides for the licensing of public burial grounds or crematoria, the prohibition of burying or cremating in unlicensed ground, the establishment of Burial Authorities, and the making of regulations for the arrangement and control of burial grounds.

Incest.—No. 6 enacts for the Colony the provisions of the Imperial Punishment of Incest Act, 1908.¹

Postal.—No. 7 is framed to prevent the Post Office being used as a vehicle for the dissemination of literature relating to lotteries or of a seditious character.

Gambling.—No. 8 consolidates and amends the law relating to gambling in accordance with well-known precedents.

Public Trustee.—No. 13 exempts the Public Trustee of England from the necessity of giving a bond or security when administration is granted to him in Fiji.

Municipal Institutions.—No. 30 provides for the appointment of a building surveyor for each incorporated town, and prescribes building regulations. It gives councils power to take measures for the prevention and extinction of fires. The meaning of the word "owner" in the Municipal Institutions Ordinance, 1909, is defined.

Ejectment.—No. 10 gives the Commissioners of the Supreme Court jurisdiction in cases of ejectment where the annual value of the lands or tenements involved does not exceed £50.

Fishing.—No. 11 enables the Governor to proclaim areas within which it shall be unlawful to fish for certain shell-fish and sponges without a licence. Regulations may be made as to the size of shells or sponges, close seasons, or other matters with a view to preserving the industry. The boundaries of areas to which a licence applies are to be marked out with buoys.

OTHER ORDINANCES.

No. 2. The 1910 Supplementary Appropriation Ordinance.

No. 5. Jewellery, Old Metal and Marine Stores.

No. 15. Appropriation.

No. 24. Labourers Medical Care (Amendment).

No. 25. Diseases of Plants (Amendment).

No. 27. Levuka Tramway.

10. WESTERN PACIFIC.

[Contributed by the HON. ALBERT EHRHARDT, K.C., *Attorney-General.*]

King's Regulations—7.

No. 1 applies to the Solomon Islands and the Gilbert and Ellice Islands Protectorate, and provides that in certain cases unadministered estates of

¹ 8 Ed. VII. c. 45. See Journal, N.S. vol. x. p. 296.

deceased persons shall be transferred and vested in the Resident Commissioner. Claims to such estates may be established within five years of the transfer, failing which the transfer shall be deemed to be absolute.

Nos. 2, 3, and 4 relate to the Solomon Islands and deal with details of customs and fishing.

No. 5 prohibits the importation into Gilbert and Ellice Islands of plants and fruits without the written permission of the Resident Commissioner.

No. 7 regulates the sale and purchase of cocoa-nuts or ivory nuts in the Solomon Islands.

V. SOUTH AFRICA.

[*Contributed by W. R. BISSCHOP, Esq., LL.D.*]

I. CAPE COLONY.

Ordinances passed—12.

Finance.—*Supply.*—Nos. 1, 2, and 11 apply various sums of money for the service of the Province of the Cape of Good Hope for the ten months ending March 31, 1911.

Loans.—No. 3 legalises the diversion or appropriation of certain loan moneys to purposes other than those for which the loan was raised, and legalises the appropriation of moneys due to the Sinking Fund, and indemnifies such officers and employees of the Woodstock Municipality as are or have been concerned in such diversion or appropriation, and authorises the municipality to levy a special rate for the purpose of repaying an amount due to Loan Account.

Language of Ordinances.—No. 4 makes provisions for the interpretation and shortening of the language of Ordinances by establishing general rules upon which in future the language of Ordinances shall be based.

Animal Life.—*Wild Birds.*—No. 5 amends the protection of the Wild Birds Act, No. 42 of 1899,¹ by extending such protection to the eggs of any bird protected under the Act.

Game.—No. 10 amends the Game Laws (1886–1908) Consolidation and Amendment Act, No. 11 of 1909.²

Fisheries.—No. 12 repeals Acts No. 7 of 1883, No. 29 of 1890, and a number of subsequent Acts, and consolidates and amends the Fisheries Laws.

¹ See Journal, N.S. vol. iv, p. 587.

² See Journal, N.S. vol. xi, p. 412.

It provides for the annual licence for fishing boats and the fees to be paid therefor in accordance with the tonnage of the vessels, for the penalty to be paid in the absence of any licence, and for the registration of the various fishing boats. It prohibits the creating of explosions in the water for catching fish, and it limits the fishing areas and fishing seasons, leaving it to the Administrator to make regulations regarding the same, and to impose penalties for such contraventions thereof as are set out in the Act.

This Act further provides regulations regarding the taking of non-indigenous fish and the licences for the sale thereof, as well as regarding the protection against unlawful possession of such fish during the close season. It also makes provisions for the prevention of the pollution of waters.

The Ordinance only applies to public waters and such rivers, streams, or waters of which the ownership or control is vested in any private person or municipal corporation, as shall have been identified by the Administrator in the *Provincial Gazette*.

Electricity.—No. 6 repeals the Electric Lighting and Power Act, 1895, and a number of private Acts, and consolidates the law regarding the supply of electricity for public purposes, providing that the consent of the local authority and of the Administrator has to be obtained as to the supply of electricity for public purposes as well as for any concession granted or any agreement made in connection with any supply or employment. Any new schemes or material alterations or extensions to existing schemes require the approval of the Administrator, and the Administrator's approval is also required for tariffs and conditions of supply. Special regulations may be framed both by the Administrator and by the local authorities.

Municipalities.—*East London.*—No. 7 amends s. 46 of the East London Municipality Act by enlarging the purposes for which the Council of that municipality may lease lands, and by extending the terms of the lease to ninety-nine years.

Labour.—No. 8 exempts labour colonies declared under Act No. 10 of 1909¹ for taxation for educational purposes.

Roads.—No. 9 repeals s. 8 of the Fiscal Divisions Extensions Act of 1899.

2. NATAL.

Acts passed—14.

Finance.—*Supply.*—Nos. 1, 2, and 8 apply various sums of money for the service of the Province of Natal for the ten months ending March 31, 1911.

Education.—No. 3 amends s. 16 of the Education Law, No. 15 of 1877, and s. 13 of Law No. 1 of 1884, regarding the salary of teachers in public schools.

¹ See Journal, N.S. vol. xi. p. 411.

Shop Hours.—No. 5 amends the Shop Hours Act, No. 36 of 1905,¹ in its application to boroughs and townships.

Agriculture.—*Dipping Tanks.*—No. 6 empowers town councils and local boards to incur expenditure in connection with dipping tanks and the like, and to make by-laws regarding the same.

Weeds.—No. 9 authorises boroughs or townships to make by-laws for preventing the spread of certain noxious weeds, and empowers the Administrator to add to the list of noxious weeds as contained in the Schedule of this Ordinance.

Electricity.—No. 13 amends in certain respects the Municipal Corporations Lighting Law, No. 22 of 1891, and provides for the supply, by such municipalities as possess power-stations, of electric current outside their respective boundaries.

Municipalities.—*Townships.*—No. 4 amends the laws relating to local townships regarding the election of local boards, and the powers in respect to the erection of buildings, etc.

Municipal Corporations.—No. 11 amends in certain respects the Municipal Corporations Law, No. 19 of 1872, and Act No. 22 of 1894, and grants extended powers to municipal corporations in respect of certain matters not provided for in the existing municipal laws.

Durban.—No. 7 provides for the sale in freehold of certain land situate within the Borough of Durban.

Greytown.—No. 10 extends the borrowing powers of the Local Board of the Township of Greytown, and authorises the Board to carry out certain works.

Pietermaritzburg.—No. 12 empowers the Town Council of the City and Borough of Pietermaritzburg to utilise any portion of the unalienated town lands of Pietermaritzburg for the purpose of wattle culture.

Vryheid.—No. 14 amends the Vryheid Loan Act, No. 25 of 1906 (Natal),² regarding the construction of certain water-works.

3. ORANGE FREE STATE.

Ordinances passed—9.

Finance.—*Supply.*—Nos. 1, 2, 4, and 5 apply various sums of money for the services of the Province of the Orange Free State for the ten months ending March 31, 1911.

Roads.—No. 4 amends the Roads Ordinance, No. 17 of 1905, and the Amending Roads Ordinance, No. 33 of 1905,³ in minor respects.

¹ See Journal, N.S. vol. vii. p. 485.

² See Journal, N.S. vol. viii. p. 354.

³ See Journal, N.S. vol. vii. p. 489.

Municipalities.—*Bloemfontein.*—No. 7 amends the Bloemfontein Municipality Ordinance, No. 35 of 1903,¹ and No. 36 of 1905.²

Reserved Ordinances.—No. 6, being the Bloemfontein Municipal Management Ordinance, and No. 8, containing the Pound Ordinance, were both reserved for the consideration of the Home Government.

Animal Life.—*Fisheries.*—No. 9 repeals chap. 137 of the Law Book, and makes new regulations for the preservation of fish. It contains provisions for a close season, for the protection of imported fish, and for the preservation of trout; it prohibits the use of explosives and chemicals, and regulates the use of netting.

Fishing licences are required. Contraventions of these provisions may be punished with confiscation of the fishing implements and cancellation of the licence.

Capturing of fish on Sundays is prohibited.

4. TRANSVAAL.

Ordinances passed—7.

Finance.—*Supply.*—Nos. 1, 2, 3, and 4 apply various sums of money for the service of the Province of the Transvaal for the ten months ending March 31, 1911.

Education.—No. 5 amends the Education Act, No. 25 of 1907,³ in respect of the question of language used as medium of instruction in public schools. It is provided that the medium of instruction of every pupil in any public school up to and including the fourth standard (instead of the second standard as in the Act of 1907) shall be the pupil's home language. Above the fourth standard provision shall be made for the instruction of all pupils in both English and Dutch, with this understanding: that, unless the parent of any such pupil chooses that that pupil shall be instructed through the sole medium of either of these languages or through the media of both languages, any pupil shall be instructed through that language which is best known and understood by him, the other language being used as another medium of instruction for that pupil as far as this will be possible.

In order to carry out these provisions the organisation of the system of public schools shall be such that—with regard to instruction up to and including the fourth standard—provision is made for (1) schools in which the English language, and (2) schools in which the Dutch language is the prevailing medium of instruction; and (3) schools in which either language is used as the medium of instruction in certain subjects. With regard to the

¹ See Journal, N.S. vol. vi. p. 405.

² See Journal, N.S. vol. vii. p. 490.

³ See Journal, N.S. vol. ix. p. 471.

instruction above the fourth standard, provisions are made for the introduction of parallel classes.

Provisions are made that both languages shall be taught to all pupils.

Further provisions are made for the training and certification of teachers as regards languages and for safeguarding the rights of existing teachers.

Roads.—No. 6 amends the law relating to public roads by providing powers for the Administrator of the Province of the Transvaal regarding the opening, closing, and deviation of public roads, as well as the taking possession of land for public roads.

Municipalities.—*Germiston.*—No. 7 is a private Ordinance conferring further powers on the Municipality of Germiston under the provisions of the Municipal Corporations Statutes, 1903-6.¹

5. SOUTHERN RHODESIA.

Ordinances Nos. 1-19.

Finance.—*Supply.*—Nos. 1, 9, and 19 apply various sums of money for the service of the Province of Southern Rhodesia for the year ending March 31, 1911.

Animal Life.—*Animal Diseases.*—No. 2 amends the Animal Diseases Consolidation Ordinance, 1904, by providing rules regarding the fencing of such areas as may be declared by the Administrator to be infected. Provisions are made authorising the Administration to cause dipping tanks to be erected in the infected area for the purpose of more effectually preventing the spread of disease. Among other penalties provided for contravention of the law cattle unlawfully moved from such areas may be confiscated. New rules are set out for quarantining suspected animals, also a general right of inspection of land and animals by authorised persons.

No. 6 again amends the above amending Ordinance.

Municipalities.—No. 3 amends the Municipal Laws Amendment Ordinance, 1910, in some minor respects.

Salisbury.—No. 10 provides for the supply of water and electricity in the Salisbury Municipality and town areas, and enables the Council of such municipality to raise a loan not exceeding £120,000 for this purpose, and for street making and other improvements within the municipality.

Railways.—No. 4 makes provision for the construction of a line of railway from a point in the Mazoe district to a point in the Salisbury district.

Licensing.—No. 5 amends the Cape of Good Hope Liquor Licensing Act, 1883, by substituting a new definition of "temporary licence."

¹ See Journal, N.S. vol. vi. p. 409; vol. vii. p. 180; and vol. viii. p. 364.

Magistrates' Courts.—No. 7 repeals all the laws of the Cape Colony and the Government's regulations, proclamations, and ordinances hereunto in force in Southern Rhodesia and providing for the civil and criminal jurisdiction of the resident magistrates. It re-enacts and consolidates the law relating to such jurisdiction with certain amendments.

The laws repealed are: Cape Colony Act No. 20 of 1856, Act No. 9 of 1857, Act No. 12 of 1860, Act No. 12 of 1869, Act No. 21 of 1869, Act No. 21 of 1876, Act No. 19 of 1877, Act No. 16 of 1882, Act No. 43 of 1885, Act No. 31 of 1886, s. 1 of the Juvenile Offenders' Act and Police Offenders' Act Amendment Regulations, 1895, the Magistrates' Courts Act Amendment Regulations, 1895, the Magistrates Courts' Prosecutors Regulations, 1898, Regulations published under Government Notice No. 184 of 1898, providing for the arrest of money belonging to defendants in the hands of third persons, High Commissioner's Proclamation No. 3 of 1899, Ordinance No. 13 of 1899, Ordinance No. 5 of 1904.

The main provisions of the new Consolidated Act are those found in Cape Colony Act No. 20 of 1856, and the amendments to that act mainly consist of an extension of the civil jurisdiction of the Magistrates' Courts. The magistrates henceforth shall have jurisdiction in civil cases founded upon "liquid" documents to the amount of £250 and any interest due thereon, while with regard to "unliquid" cases their jurisdiction shall be limited to claims of less than £100. In all other cases they shall have jurisdiction in matters of dispute not exceeding the amount of £50, while in actions of ejectment the limit is extended to £100.

Further it is enacted that in cases where a counterclaim in respect of any "liquid" debt is made beyond the jurisdiction of the magistrate he may, upon the application of either party, refer the case to the Supreme Court, while with the exception of cases set out in s. 5¹ of the present Act both parties shall be able to agree in writing to submit their dispute to a magistrate, and in that case the magistrate shall have full jurisdiction to try the same, although the matter in dispute may otherwise exceed his jurisdiction. Thus statutory provisions have been made in matters which were followed by the Courts in Cape Colony as the result of litigation in the last century.²

Provision is made for remittal to the Magistrates' Courts of actions (other than those mentioned in s. 5 of the Act) brought before the High Court of Southern Rhodesia in cases where it is proved that the plaintiff has no possible means of paying the costs of the defendant should judgment be not found for the plaintiff, and the plaintiff be unable or unwilling to give full security for the defendant's costs to the satisfaction of the Master of the High Court.

¹ S. 5 is the same as s. 8 (3) of Cape Colony Act No. 20 of 1856.

² See *Randall v. Tote*, 5 E.D.C. 88; *Theron v. Tiffin*, 13 S.C. 278; *Oxland v. Key*, 15 S.C. 315.

Provision is made for the execution of judgments upon immovable property for the recovery of rent due on such immovable property.

With the exception of agents already admitted, the admission and enrolment of agents before the Magistrates' Courts is now unconditionally abolished, and the practice in the Courts of Magistrates left entirely to attorneys admitted to practise in the High Court.

With regard to the jurisdiction in criminal cases the provisions of Act No. 20 of 1856, Cape Colony, and its amending Acts are mainly followed. The procedure in the case of remittal by the Attorney-General of cases submitted to him for trial to the Magistrates' Courts is fully set out as well as the local limits of the magistrates' jurisdiction, formerly found in various Acts and Ordinances.

Right of appeal is allowed from the Magistrates' Court to the High Court, but in order to be able to prosecute such appeal in person, it shall be necessary for the appellant to have a certificate from a Judge of the High Court stating that, according to the judge's opinion, there are reasonable grounds for appeal. The Attorney-General is entitled to bring a magistrate's decision in review before the High Court on a point of law.

It is further provided that any Magistrate's Court shall be entitled to appoint a commissioner for taking evidence *de bene esse*, and any magistrate shall have the right to impose a fine or imprisonment for contempt of Court committed before him.

The Administrator in Council remains entitled to frame rules, orders, and regulations respecting the manner of civil proceedings in any Magistrates' Courts.

Natives.—Labour.—No. 8 establishes a native labour bureau in Southern Rhodesia, to take the place of the Association till then in existence and known as the Rhodesian Native Labour Bureau, and which had for its purposes and objects the collection and supply of coloured labourers for certain employers of labour in Southern Rhodesia. As that Association was hampered and hindered in the due fulfilment of its purposes by want of sufficient funds, it was considered the readiest and most generally acceptable way of providing such funds, to form another Association with limited liability and with sufficient capital and power to raise money in order to carry out its objects fully and successfully, and to take over the assets and to assume the liabilities of the existing Association.

The Ordinance then provides for the incorporation of the new Rhodesian Native Labour Bureau, the dissolution of the old Bureau and the winding up of its affairs, as well as the transfer of the immovable property from the old Bureau to the new one.

The Schedule of the Ordinance contains the Memorandum and Articles of Association of the new Rhodesian Native Labour Bureau, of which the management is placed in the hands of a Board of Management consisting of nine persons who are appointed partly by the British South Africa Company,

partly by the Administrator for the time being of Southern Rhodesia, partly by the debenture holders, and partly by the members of the Bureau.

No. 11 provided for the registration of contracts of labour, but was repealed by Ordinance No. 16 of the same year.

No. 16 repeals the Natives Employment Ordinance of 1899, and its amendment. Ordinance No. 1 of 1907,¹ as well as the Labour Contracts Registration Ordinance No. 16 of 1911, and regulates afresh the recruiting and employment of natives in Southern Rhodesia, providing measures for the controlling and removal of natives for employment beyond the borders of Southern Rhodesia.

Kaffir Beer.—No. 17 regulates the brewing, sale, possession, and supply of kaffir beer. It provides that the Administrator may authorise employers to gratuitously supply, and local authorities to brew and sell, kaffir beer.

General dealers are not to keep or supply kaffir beer at their stores. Provisions are made to prevent the holding of beer-drinking assemblies in connection with any kraal without the permission of the kraal head, who is held responsible for the good conduct and order of all persons who may join such assembly. It prohibits the supply of kaffir beer to intoxicated persons and provides that all persons shall leave beer-drinking assemblies not later than sunset. Provision is also made against the adulteration of kaffir beer, while the Administrator is authorised to prescribe which persons shall be allowed to keep kaffir beer in their possession, and to prohibit the possession of unreasonable quantities of kaffir beer.

Bushmen.—No. 15 provides for the protection of Bushmen relics, that is to say, any drawing or painting, or stone petroglyph of the kind commonly known or believed to have been executed by the South African Bushmen or other aboriginals, and including any of the anthropological contents of the graves, caves, rocks or shelters, middens or shell-mounds of such Bushmen or other aboriginals.

No persons shall be entitled to remove such relics without first having obtained a written permit to do so. Further regulations for the better carrying out of the objects and provisions of this Ordinance may be made by the Administrator.

Auction and Auctioneers.—No. 12 repeals Ordinance No. 6 of 1844, Act No. 5 of 1858, and Ordinance No. 6 of 1901, and abolishes the duty on sales by auction. Instead thereof it fixes an annual licence payable by those interested in carrying on the business of an auctioneer.

Obscene Literature.—No. 14 prevents the making, importation, sale, exhibition, or possession of obscene books, pictures, prints, and other articles, by declaring them offences for which penalties are provided under the Act. Persons selling or distributing, or exposing or causing the same to be done, shall be presumed to be importers or manufacturers under the Act.

Provisions are made for the search of suspected premises by a magistrate

¹ See Journal N.S. vol. ix. p. 477.

on complaint upon oath laid to him. Any goods found of an incriminating nature under the Act may be confiscated, and the occupier of the house, shop, room, or other place wherein such application may have been seized may be liable to prosecution and conviction under the Act. Further provisions are made for protecting persons engaging in the search for committing any irregularity therein.

Penalties are also provided for sending indecent publications through the post.

Agriculture.—*Co-operative Societies.*—No. 18 amends the Co-operative Agricultural societies Ordinance of 1909 by giving the Administrator power to authorise a society under the Act to raise a loan or alter its rules, and by setting out the method of ascertaining the views of its members.

VI. WEST AFRICA.

[*Contributed by* ALBERT GRAY, Esq., K.C.]

I. GAMBIA.

Ordinances passed—12.

Customs.—The Governor in Council may in any particular case make an order for the admission free of duty of any goods “for an object of a general public character or an enterprise deemed to be beneficial to the Colony” (No. 2).

Wild Animals Preservation.—Power is given to prescribe a weight under which elephants’ tusks may not be bought, sold, or exported, and to confiscate tusks of less weight (No. 6).

2. GOLD COAST.

(i) COLONY.

Ordinances passed—18.

Mosquitoes.—Sanitary officers may enter any premises in the daytime and destroy mosquito larvæ, and render any accumulation of water innocuous. It is also an offence punishable with fine or imprisonment for a person to have any water receptacle containing larvæ on his premises, or to fail to clear out any such receptacle every three days, unless it is properly screened (No. 6).

The other Ordinances are either financial or make small amendments in existing legislation.

(ii) ASHANTI.

Ordinances passed—3.

Frontier Force.—The Gold Coast Ordinance of 1909 is applied to Ashanti by No. 1.

(iii) NORTHERN TERRITORIES.

Ordinances passed—4.

Frontier Force.—The Gold Coast Ordinance is applied also to these Territories by No. 1.

3. SIERRA LEONE.

Ordinances passed—23.

A New Corporation Sole.—The Vicar Apostolic of Sierra Leone is made a body corporate for the purpose of holding lands belonging to the Roman Catholic Church (No. 1).

Process of Court.—The first part of No. 3 deals with service of process out of the jurisdiction of certain inferior Courts. Next, provisions are made for the extension of judgments for execution in any part of the Colony or Protectorate. These enactments are normal; but the provisions relating to witnesses in s. 13 go beyond English practice. "In any cause or matter" (*i.e.* including any civil cause), the Circuit Court or Court of the District Commissioner either of its own motion or on the application of any party, may summon any person within the Protectorate or Colony to attend to give evidence or to produce any document. If the summons is issued on application, the payment of travelling expenses may be ordered as a condition precedent. If issued on the mere motion of the Court, the witness does not apparently get his expenses, however unnecessary his evidence may be. If the witness so summoned fails to attend, or to produce a document, he is guilty of a contempt of Court and liable to a fine of £100. Moreover, any party present in court, whether a party or not, may be compelled to give evidence and to produce documents. These provisions seem to be borrowed in part from the Indian Civil Procedure Code, but in that code the non-payment or non-tender of expenses is to be deemed a lawful excuse for not complying with the summons.

Military.—Three Ordinances relate to the military forces of the Colony (Nos. 9, 10 and 17). The first and last amend the rules for gratuities and pensions of the West African Frontier Force; while No. 10 renders all West African native soldiers subject to the West African Enlistment Ordinance, 1904.

Education.—Provision is made by No. 13 for the appointment of a Director of Education, also of an Education Committee consisting of the Director, the Chief Inspector of Schools, the Principal of the Model School and twelve other persons, one at least of whom must be a woman. There is

to be a separate committee, also presided over by the Director, for Mohammedan education. The conditions under which capitation grants are to be made are set out. One of the conditions is that exemption from school fees must be given in cases where the parents or guardians are unable to pay. Another is that no pupil is to receive religious instruction to which the parent or guardian objects. Power is given to the Governor to establish Government schools; other schools are recognised as "assisted schools."

Mosquitoes.—The campaign against mosquitoes is continued by No. 15, which provides that wells situate within 130 yards from a public pump or stand-pipe must be permanently closed. Beyond 130 yards the well must be provided with a cover which is to be removed only during the abstraction of water. All barrels, tubs, or tanks used for the storage of water must also be provided with secure covers.

Native Land Concessions.—The Concessions Ordinances of 1902 and 1906 are further extended by a provision that no tribal authority shall enter into any agreement whereby any land of a greater extent than 50 acres shall be alienated (otherwise than to the Government for public purposes) for any longer term than ninety-nine years (No. 16).

Protectorate.—The Protectorate Ordinance of 1901 is amended by a provision that parts of the Colony may be administered as if they were parts of the Protectorate (No. 18). This *deminutio capitis* is probably due to the deplorable state of affairs in the Protectorate and on the borders of the Colony, occasioned by the secret workings of the murder societies. Recent information seems to show that existing legislation, which has been frequently noticed in this Journal, has had little or no effect towards putting an end to the reign of terror.¹

¹ The state of things with which the Government has to deal is shown in the Annual Report for 1911:

"The criminal statistics of the year under review do not call for special comment, save to observe that there seems to be no decline of cannibalism in the Protectorate.

"In addition to the convictions recorded for cannibal murder, there have also been convictions on the charge of being in possession of the insignia and implements of cannibal societies.

"The most active of these organisations are presumably the Human Leopard and Human Alligator Societies; for, although once—in 1910—a case purporting to relate to the Human Baboon Society was judicially investigated, there appears to be hitherto no conviction for murder on record of professed members of that body.

"The operations of the Human Alligator Society are traceable mainly on the Rokelle River and in the vicinity of other rivers in the north of the Protectorate, while the influence of the Human Leopard Society is felt most in the Ronietta and Northern Sherbro Districts.

"Apart from the murders which take place from time to time to gratify a lust for human flesh, there are indications that in the Imperri and Timdale Chiefdoms, which are situate within the latter district, events such as the coronation of a chief or the death of a prominent personage are frequently made an occasion for a human sacrifice by either the 'Borni' or the 'Tomah' society."

4. NORTHERN NIGERIA.

Proclamations passed—12.

Collective Punishment.—A law similar to that which we have previously noticed in the legislation of East Africa provides for the imposition of fines on villages where criminals are harboured, or where serious offences are committed and no one can be charged. The village can prove its innocence (No. 2).

Tariff.—A new tariff is introduced by No. 5. There are the usual schedules of duties and exemptions. Generally speaking, all goods which have paid duty at any port in Southern Nigeria are exempt, except salt.

Leprosy.—Power is given by No. 8 to segregate lepers. The law follows the provisions of Ordinance No. 10 of Southern Nigeria for 1908, noticed in our Review for that year.

The other Proclamations make small amendments in existing legislation.

5. SOUTHERN NIGERIA.

Ordinances passed—31.

Protectorate.—By an Order-in-Council of May 31, 1910, His Majesty enacted that it should be lawful for the Legislative Council of the Colony "to exercise and provide for giving effect to" all the powers and jurisdiction of His Majesty within the Protectorate. It is now provided by No. 7 that, so far as relates to Ordinances and rules and orders in force in the Colony, the power of applying them to the Protectorate may be exercised by an order of the Governor with the advice and consent of the Legislative Council.

Folded Woven Goods.—All imported folded woven goods (except those specified in the schedule) must be in folds of not less than thirty-six inches in length, and each piece must be marked with the number of yards and inches contained therein. The exemptions include Indian bafts, cashmeres, serges, alpaca, linen drills, khaki, damasks, flannels, silks, silk velvets, tweeds, handkerchief cloth, broadcloth and worsted cloth. So that the law would seem intended to apply chiefly to cotton piece goods. Handkerchief cloth must have a dividing mark between the handkerchiefs, and must be folded at that division. The piece must have a ticket showing the length and breadth of each handkerchief and the number in each piece (No. 9).

Ex-King of Benin.—Authority is given by No. 11 to detain at any place in the Colony or Protectorate, or to deport, Overami, ex-king of Benin. *Habeas corpus* is not to be allowed for the purpose of questioning the legality of the detention.

Native Currency.—Some years ago the Legislature, out of a laudable desire to induce the natives to use the admirable British coin which is provided for their use, passed an Ordinance forbidding the importation of “manillas” (brass rings) and brass rods, which the natives out of perversity preferred as currency. The use of manillas was checked, but instead of taking to the King’s coin as docile natives should, they cast about for some other circulating medium as a substitute for the brass rings, and fixed upon “cases of gin.” This was one of the counts in the missionaries’ indictment before the recent Royal Commission on Liquor Traffic. A study of the evidence does not, indeed, show that the practice of using gin as currency, however reprehensible, increased drunkenness. There was qualifying evidence that the possessors of cases of gin preferred to keep them whole, as they would a banknote. However that may be, the Legislature has seen its mistake, and has now (No. 14) repealed the Native Currency law against manillas. Some other course will have to be taken to promote the use of coin. This may be done in carrying out the suggestions of a committee which has recently reported on the whole subject of currency in the West African Colonies, and has recommended that West Africa should have a currency of its own. It might be considered advisable, at least with regard to the subsidiary coinage, that the pieces should be perforated so as to permit of their being strung, as in China. This device has been adopted with success in East Africa.

Coroners’ Inquests.—Where a medical practitioner reports and certifies that a death is due to natural causes, and that the body shows no signs to the contrary, the coroner may dispense with an inquest and order immediate burial (No. 22).

Adulteration.—The Legislature of this Colony attempts by No. 23 to create a legal standard of purity for produce, the Governor being authorised to determine the standard in each case, and to specify the allowable proportions of “foreign, superfluous, or inferior substances.”

Vagrancy.—The Vagrant Ordinance, 1911 (No. 29), repeats the familiar provisions of the Vagrancy Act, 1824. We have the three classes of (i) idle and disorderly persons, (ii) rogues and vagabonds, and (iii) incorrigible rogues. When we think of these fine distinctions, and moreover come across the provisions as to having in possession “any picklock, key, crow, jack bit or other implement,” and “armed with any gun, pistol, hanger, cutlass, bludgeon,” etc., we wonder how the Nigerian translator will manage.

VII. EAST CENTRAL AFRICA.

[Contributed by ALBERT GRAY, ESQ., K.C.]

1. EAST AFRICA.

Ordinances passed—8.

Forestry.—The Forestry Ordinance, 1911 (No. 3), is a rather perplexing effort of legislation, and lacks precision in draftsmanship. The intention is to protect forest trees and produce, and to preserve from alienation certain areas of Crown forest. The law, however, leads off with a provision that the Governor may proclaim “any area in the Protectorate to be a forest area within the meaning of this Ordinance.” The two following sections authorise rules applicable only to “Crown lands in a forest area.” Thus in the draftsman’s mind forest areas were to or might include private lands. Moreover, “forest produce” is defined as meaning trees, plants, grass, rubber, resin, etc., but without limitation either to forest areas or Crown lands. A person in possession of forest produce, within or in the vicinity of a forest area, has to give a satisfactory account of the manner in which he became possessed of the produce, otherwise he is liable to fine.

The provisions as to “demarcated forests,” which are Crown lands specified as such in a Governor’s proclamation, are curious as limiting the Governor’s own powers. A Board of Forest Commissioners is constituted, consisting of the Principal Judge and five other persons, two of whom are not in the Government service. These Commissioners have no say in the demarcation, but once this is done the Governor cannot alienate any portion of the demarcated land without the express consent of not less than two of the Commissioners.

Notice of land intended to be demarcated has to be given for three months in the *Gazette*, during which time (by s. 11) any person interested can obtain an injunction restraining the declaration. This provision is justified by the wide definition of Crown lands, which includes alienated lands on which the Crown retains a right to trees or forest produce.

Police.—A comprehensive measure for the constitution and government of the police force consolidates and amends previous Ordinances, which are repealed (No. 4).

2. UGANDA.

Ordinances passed—12.

Importation of Plants.—The Ordinance of 1908, which requires all plants imported to be fumigated, is amended by a further provision that the Governor may by proclamation prohibit the importation of any plants or things which in his opinion may be the means of introducing plant disease.

Where disinfection is, in the opinion of the Botanical Authority, not sufficient to destroy any insect pest or disease, the plants may be destroyed (No. 1).

Railways.—Hitherto the Uganda Railway, so far as within the Protectorate, has been constructed and administered under the provisions of the Indian Railways Act, 1890, which was applied under the Order-in-Council. Now that the time has come for branch lines promoted by private enterprise, it has become necessary to substitute direct for applied legislation.

The Railways Ordinance (No. 3) of 1911 is a comprehensive measure of 151 sections, containing all usual provisions for construction, administration, and inspection. It further creates a board of three Railway Commissioners, who have power to decide questions of breach of duty on the part of a railway administration, and any dispute between two or more administrations.

Firearms.—In the Arms Ordinance of 1906 the very "un-English" expression "arm of precision" was adopted from the Brussels Act. The obvious word "firearms" is now substituted (No. 4).

Customs.—An export duty of 10 per cent. *ad valorem* is imposed on all rubber, other than plantation rubber, which is defined as rubber "obtained from a plantation created in open land not in connection with the lease of a forest" (No. 6).

Revision of Laws.—The edition of the statute law of the Protectorate, compiled by the judges of the High Court and published in 1910, is to be the "sole and only proper edition of the laws" to the end of 1909 (No. 8).

King's African Rifles.—Five preceding Ordinances relating to this corps are consolidated and amended by No. 9 of 1911. The corps is expressed to be levied for the common defence of the Uganda, East Africa, Nyasaland, and Somaliland Protectorates. Service beyond the Protectorate may only be ordered with the approval of the Secretary of State.

Police.—An incentive is given to the native policeman by a provision that every non-commissioned officer and constable, after nine years' continuous good service, shall be exempted from hut tax for one hut for life, or from poll-tax for life (No. 11).

Courts.—The Courts Ordinance (No. 12) makes a further step in the release of Uganda from the leading-strings of Indian legislation. The Civil and Criminal Procedure Codes are still operative, but their authority is being gradually restricted. The Protectorate Courts are reconstituted, and their powers are prescribed more and more with regard to local conditions.

Some salient features of the Ordinance may be mentioned. The High Court is ordinarily constituted by one judge, but the Principal Judge may direct any case or matter to be heard before two, in which case the opinion of the senior judge prevails. The High Court can deal with con-

tempt in the same manner as the "High Court of Justice in *Great Britain*" (an obvious slip); but as to contempts committed in the face of the Court, must proceed according to the Criminal Procedure Code.

There is a general right of appeal in criminal cases from the High Court, acting as a court of original jurisdiction, to the Court of Appeal for Eastern Africa; but where it acts as an Appellate Court, there is a further appeal only where it convicts on an appeal from acquittal.

In civil cases there is an appeal to the Court of Appeal where the sum at issue exceeds Rs.1000. There is no appeal in suits between natives except by leave of the Governor, nor in cases decided by the High Court on appeal from Native Courts.

As to subordinate Courts, the whole country is divided into districts and they are grouped in sessions divisions for criminal jurisdiction. District Courts have district magistrates and judges, who wield both criminal and civil jurisdiction. In criminal matters their powers follow the Indian law; in civil matters their jurisdiction is unlimited, subject to certain exceptions.

Native Courts are under the supervision of the District Courts, who may revise their sentences. These Courts cannot issue process to any person who is not a native. Outside the jurisdiction of Native Courts, recognition is made of the jurisdiction of tribal chiefs and councils of elders, and the orders of these authorities, if supported by custom, are enforceable before the District Court.

3. SOMALILAND.

Ordinances passed—2.

Indian Contingent.—It would seem from No. 1 that the Protectorate Government has been unable to recruit a satisfactory force at home. The King's African Rifles Ordinance of 1909 is repealed, and in its stead we have an ordinance authorising the embodying of an Indian Contingent. Reliance is evidently placed upon arrangements with the Government of India, as we find that officers are to rank according to their seniority "in the Indian Army." The force is moreover subject to the Indian Articles of War.

Townships.—Authority is taken by No. 2 to create municipal councils, with power to rate. No provision is made as to the constitution of the councils, and the law, which is short and vague, would hardly form a precedent for use elsewhere.

4. NYASALAND.

Ordinances passed—17.

Game.—The Game Regulations, 1902, are superseded by Ordinance No. 2 of 1911. It follows the model now usual in African Protectorates, with some variations. There are three schedules of (i) animals not to be hunted,

killed, or captured except under special licence; (ii) animals the females of which are not to be hunted, killed, or captured when accompanied by their young (the young being similarly protected), except under special licence; and (iii) animals limited numbers of which may be taken under a visitor's or a Protectorate licence. The former licence costs £10, the latter £2; the Protectorate licence being grantable only to Protectorate officers, residents, and naval officers on the East African station. A visitor must also make a deposit of £50 as security. Elephants may be killed under special licence, the tariff running from £10 for one to £60 for four. The Ordinance also affects to curb the killing propensities of the natives. It further prescribes a Game Reserve, the boundaries of which are set forth in a schedule.

Witchcraft.—Trial by the ordeal of *muabvi* or other poison, fire or other ordeal likely to result in death or bodily injury is prohibited. Any person who instigates or directs such a trial is liable to ten years' hard labour: or to imprisonment for life if the trial results in death of the victim. Further penalties await those who take part in such ordeals, prepare the poisons, or have them in possession, who charge others with witchcraft, employ witchfinders, or represent themselves to be wizards or witches. There is a saving in favour of the law of murder.

Forestry.—A useful law for the protection of forests and forest produce (No. 5) is on the same lines as the East African Ordinance noticed above.

Statute Law.—Provision is made by No. 7 for a new edition of the Protectorate Laws, to be compiled by the Judge of the High Court. An "Interpretation and General Clauses" Ordinance (No. 12) applies the principles and precedents of the Interpretation Act, 1889.

Military.—The King's African Rifles Ordinance, 1911 (No. 9), supersedes laws of 1903, 1905, 1908, and 1910, and forms a comprehensive military code of seventy-three sections.

Intoxicating Liquor.—A very stringent law (No. 10) supersedes the existing Ordinances of 1904, 1905, and 1906. Intoxicating liquor may be imported only for the use of the non-native population, and the manufacture of distilled liquor is forbidden in the Protectorate. For the sale of liquor on premises a licence fee of £40 is required. Licences may also be given on easier terms for sale on vessels and trains. The sale of liquor to natives is absolutely prohibited except under doctors' orders.

Hut Tax.—The Protectorate is divided for this purpose into proclaimed and non-proclaimed districts (No. 14). In the former hut tax may be levied up to 12s. per hut. The tax in non-proclaimed districts is fixed at 6s. Relief from the tax may be given on a certificate that the native has done a certain amount of cultivation and has sold the produce.

Land Tax.—A land tax of $\frac{1}{2}$ d. per acre is imposed by No. 15, with a minimum of 1s.

Appeal.—An appeal is given to the Court of Appeal from any judgment

of a judge of the High Court either on matter of fact or law (No. 17). The Governor may appeal to the Court of Appeal from any original or appellate order of acquittal pronounced by the High Court. The Court of Appeal may on appeal from an acquittal reverse the order or order a re-trial or find the prisoner guilty and pass sentence accordingly: on appeal from a conviction they may acquit, or order a re-trial, or reduce or alter the sentence. In civil cases an appeal lies from any order of the High Court in any suit where the subject-matter exceeds £70 in value, and in any case by leave of the High Court or Court of Appeal.

VIII. SOUTH ATLANTIC.

[*Contributed by* EDWARD MANSON, ESQ.]

I. FALKLAND ISLANDS.

Ordinances passed—7.

Wharves (No. 1).—This Ordinance provides regulations for the use of Government wharves.

Supply (Nos. 2 and 3).

Intoxicating Liquors (No. 5).—In the Dependency of St. George it has apparently been permissible hitherto to sell intoxicating liquors without a licence. This Ordinance supplies the necessary control.

Inebriates (No. 6).—The “black list” is already known in the Falkland Islands; but the “prohibited person” finds means of evading it. This Ordinance reinforces the prohibition by fine or imprisonment where the prohibited person sends any one to procure him liquor or is found in possession of liquor or found drunk in Stanley. During such imprisonment, if the family is indigent, the Government may allow 1s. 6d. a day to the wife and 3d. a day for each child.

Statute Law Revision (No. 7).—A Commissioner is appointed to prepare a new and revised edition of the Ordinances of the Colony.

2. ST. HELENA.

Ordinances passed—3.

Seamen (No. 1).—Deserters Ordinance, 1895, amended.

Supply (Nos. 2 and 3).

IX. NORTH AMERICAN COLONIES.

I. THE DOMINION OF CANADA.

[Contributed by J. G. ARCHIBALD, ESQ.]

Acts passed—Public, 28 ; Private, 122.

The legislation of the Dominion for this session has been somewhat less than usual in extent, and is largely of an amending character. Among statutes containing an element of novelty, the following may be referred to :

Forest Reserves and Parks (No. 10).—This Act marks an important advance in the conservation of natural resources. It is designed for the preservation of timber, minerals, and animals, and for the maintenance of conditions favourable to a continuous water supply. For this purpose Crown lands in the provinces of British Columbia, Alberta, Saskatchewan, and Manitoba of several thousands of square miles in extent are withdrawn from sale, lease, occupation, and hunting.

By s. 18 of the Act, the Governor in Council may from time to time designate areas to be maintained as public parks and pleasure grounds for the Canadian people.

An Act to amend the Indian Act (No. 14).—This statute permits the expropriation for public purposes, and with the consent of the Governor-General, of lands forming part of Indian Reserves. Provision is made for compensation and the allocation of fresh lands in substitution.

The Opium and Drugs Act (No. 17).—This is a statute of considerable stringency dealing with opium, morphine, cocaine, eucaïne, and their compounds. Subject to closely guarded exceptions for medicinal and scientific uses, any person who manufactures, sells, imports or exports, carries or causes to be carried, and has in his possession any of the above drugs, commits an offence punishable by fine and imprisonment. It is further made an offence for any person to smoke opium or to be found upon premises resorted to for that purpose. Practical provisions follow for securing that the Act shall be effective. No sale shall be made by any druggist except upon the prescription of a qualified medical practitioner ; no such prescription must be filled more than once ; all sales shall be recorded in detail in a special book, open at all times to the police.

It is noteworthy that in any proceeding under the Act, where the defendant is proved to have in fact dealt in such drugs, the burden or showing that such dealing is protected by an exception rests upon the defendant.

The Seed Control Act.—No. 13 prohibits the sale for the purpose of seeding of any seeds of cereals, flax, grasses, and the like, which are not free from the seeds of noxious weeds, unless the common names of such noxious weeds are plainly marked on the package.

No. 25 empowers the Governor in Council to grant a subsidy for a steamship service between the Pacific coast of Canada and China and Japan.

No. 28 provides for the establishment of an International Joint Commission for carrying into effect the Waterways Treaty with the United States of January 11, 1909. It further enacts that any interference with or diversion from their natural channel of any waters in Canada, which in their natural course would flow across the boundary or into boundary waters, and which interference results in injury on the United States side of the boundary, shall entitle the injured party to the like remedies in Canada as though such injury had occurred at the point where the interference took place.

2. PROVINCE OF BRITISH COLUMBIA.¹

Acts passed—Public, 61; Private, 17.

Minister of Railways.—The legislation of British Columbia for 1911 includes an Act (No. 10) to amend the Constitution Act, by creating the post of Minister of Railways, who shall be a member of the Executive Council, and shall be appointed by the Lieutenant-Governor. The number of the Council is thus raised to eight. Another Act (No. 11) amends the Constitution Act by changing the title of the Chief Commissioner of Lands and Works to "Minister of Lands."

Railways Act.—In connection with the creation of the Ministry of Railways a Railways Act (No. 44) has been passed. The Act is to apply to all existing companies save so far as its application is excluded by the special Acts incorporating the companies. The Act contains elaborate provisions as to the incorporation of companies, their borrowing powers, the constitution of the board of directors, and other details. Provision is made with regard to the location of railway lines, the expropriation of lands, running powers, level-crossings, and junctions, highway crossings, drainage, farm crossings, fences and gates, cattle guards, bridges, tunnels, and other structures, and the Act authorises the bringing of suits against the railway companies and permits amalgamation agreements subject to the sanction of the Minister. Similarly traffic agreements require the sanction of the Minister. Among other things it is provided that all persons who labour in, on, or about the railway shall be paid such wages as are generally accepted as current for similar occupations in the district in which the work is being performed, or if there is no current rate, then at a fair and reasonable rate, and in the event of a dispute arising as to what is the current rate or a fair and reasonable

¹ From the report relating to the self-governing Dominions prepared in the Dominions Department of the Colonial Office (Cd. 6091).

rate, it shall be determined by the Minister, whose decision shall be binding. The Minister is also given power to disallow any tariff fixed by a railway company, and to require the company within a prescribed time to substitute a tariff satisfactory to him.

Sanitary Regulations.—By No. 20 the Provincial Boards of Health are empowered to make regulations applicable to lumber camps, mining camps, saw mills, railway construction camps, and other places where labour is employed, for the purpose of preventing nuisances and the outbreak of diseases, for the cleansing and regulating and inspection of camps, for providing for the employment of duly qualified practitioners and the erection of hospitals; and for providing for the construction and inspection of houses for men engaged in such camps.

Coal Mining.—By No. 33 the Coal Mines Regulation Acts are consolidated into an elaborate code, making provision for the protection of coal miners.

Motor Vehicles.—No. 36 regulates the use and operation of motor vehicles. No person is permitted to act as a chauffeur unless he has been licensed, and the grant of a licence is conditional upon the Superintendent of Provincial Police being satisfied of the fitness and capability of the applicant to act as a chauffeur. Every licence must be renewed annually. The carrying of search-lights or intermittent or flash-lights by motors is forbidden. Strict regulations are laid down to secure that persons in charge of motors shall avoid frightening horses, and a speed limit of 10 miles is imposed upon any highway within any city, town, or village, and of 25 miles in open country, and 12 miles in wooded country. Motors must comply with the rules of the road, which are the same as in England.

Deserted Wives.—No. 61 makes new and improved provision for the maintenance of deserted wives. A wife shall be deemed to be deserted if she is living apart from her husband because of repeated assaults or for acts of cruelty, or because of his refusal or neglect, without sufficient cause, such as adultery, to supply his wife and infant children with food, clothing, or other necessities. On complaint to a magistrate and on proof of the matter of the complaint, an order may be made for the maintenance of the plaintiff and infant children. Power is given to the magistrate to vary the order on the application of either husband or wife. Committal to prison in default of payment for a period not exceeding thirty days is permitted, and a garnishee order may be made. An appeal is permitted as in the case of judgments under the Small Debts Act.

3. ALBERTA.

The session did not begin until November, so that no legislation was actually passed within the year 1911.

4. PROVINCE OF MANITOBA.¹

Acts passed—Public, 74 ; Private, 46.

Child Protection Act.—The Acts of Manitoba for 1911 include an Act, No. 6, to amend the Children's Protection Act.² This Act forbids the habitual employment of any child under the age of twelve years between 9 o'clock in the evening and 6 o'clock in the morning, and the employment of any child under the age of sixteen years in any occupation likely to be injurious to his life, limbs, health, education, or morals, and any person guilty of a contravention of these provisions shall be liable on summary conviction to a fine not exceeding \$50, and in default of payment to imprisonment with hard labour for a period not exceeding one month, and he shall also be liable to pay the costs of the prosecution. It is further provided that the publisher of any newspaper or magazine published in Manitoba who publishes any advertisement dealing with the adoption, boarding out, or care of any infant under the age of thirteen months must procure from the person requiring the publication a signed memorandum giving his or her name, address, and occupation, and immediately after the first publication of the advertisement the publisher must send forthwith a copy of the advertisement and the memorandum of the name, address, and occupation of the person requiring the publication to the Superintendent of Neglected Children, Winnipeg, under a penalty of \$50, or in default of payment to imprisonment with hard labour not exceeding one month, and liability to bear the costs of the prosecution.

Company Law.—No. 10 amends the law respecting the licensing of extra-Provincial corporations.³ All licences hitherto granted under that Act to companies incorporated under the authority of a statute of any Province of Canada in which companies incorporated under the law of Manitoba are denied similar licences are declared null and void. Every extra-Provincial corporation incorporated under an Act of the Legislature of any other Province of Canada applying hereafter for a licence under the Act shall, in addition to the other formalities, produce evidence to show that similar privileges are granted to Manitoba companies in the Province in which the head office of the company is situated. By No. 20 certain alterations are made in the Manitoba Insurance Act.⁴ Every company licensed to carry on the business of fire insurance or inland or marine insurance or both shall at

¹ From the report relating to the self-governing Dominions prepared in the Dominions Department of the Colonial Office (Cd. 6091).

² No. 22 of the Revised Statutes of Manitoba, 1902.

³ No. 10 of 1909. See Journal, N.S. vol. xi. p. 449.

⁴ No. 82 of the Revised Statutes.

all times maintain assets in Manitoba at least equal in value to the total of the unearned premiums upon all outstanding unmatured policies upon property in Manitoba calculated, *pro rata*, for the time unexpired, together with the amount of matured claims for losses in Manitoba, and all its other liabilities of every kind in the Province. No dividend shall be paid by a company while its assets are less than the amount so required, or while its paid-up capital is impaired. If any dividend is paid the licence of the company may be cancelled by the Lieutenant-Governor in Council.

Motor Vehicles.—The Motor Vehicle Act¹ is amended by No. 28 in numerous details. Provision is made that every motor vehicle shall carry in front and behind a number plate, and shall be equipped with adequate brakes and with a suitable bell, gong, horn, or other device. No chauffeur's licence shall be granted unless the applicant has passed such examination as the Municipal Commissioner may require, and until the Commissioner is satisfied that he is a fit and proper person to receive the licence. No licence shall be granted to any person under the age of eighteen years. Every person driving a motor when approaching an intersecting highway or a curve or corner of a highway within the limits of a city, town, or incorporated village or a cross-road outside these limits shall, when necessary, slow down to a speed not exceeding six miles an hour, and give timely warning. Penalties are also imposed for interference with motor vehicles without the authority of the person in charge.

Moving Pictures.—By No. 29 the Lieutenant-Governor in Council is given full power to make such regulations as seem desirable governing theatres, halls, or other buildings constructed or used for holding public meetings or for places of public resort or amusement, and regulations governing the licensing, using, and operating of cinematographs, moving picture machines, or other similar apparatus involving the use of a combustible film.

Municipal Assessment.—No. 32 amends very elaborately the Assessment Act,² and substitutes new regulations with regard to assessments for loan purposes.

Noxious Weeds.—By No. 42 every occupier of land, or, if the land is unoccupied, the owner thereof or his agent in the Province, shall cut down noxious weeds growing on the land or on the highway immediately adjoining the land in each year between May 1 and November 15 as often as may be necessary to prevent the ripening and scattering of the seed of noxious weeds. It is also obligatory on the persons operating threshing machines to clean these machines after threshing, and railway companies must cut down all noxious weeds growing on their lands. The carrying out of the law is to be ensured by the appointment of municipal noxious weed inspectors by every municipal council, and if the council decline to make the appointment

¹ 7 & 8 Ed. VII. No. 34. See Journal, N.S. vol. x. p. 398.

² No. 117 of the Revised Statutes.

the Minister of Agriculture and Immigration shall have power to make the appointment in place of the municipality.

Death Duties.—By No. 60 important provisions are made regarding the levying of death duties on the property of persons who die domiciled in the Province. The principle adopted is the levying of duty on the property in the Province of the deceased, but the rate varies according to the total amount of the property levied including property outside the Province. This mode of procedure has been rendered necessary by the decision of the Privy Council in 1908¹ that by s. 92 of the British North America Act a Canadian Province cannot raise taxation on any property not legally situated within the Province.

5. PROVINCE OF SASKATCHEWAN.²

Acts passed—Public, 41 ; Local and Personal, 19.

Electoral Matters.—The Acts of Saskatchewan for 1911 include (No. 5) a number of detailed amendments to the Elections Act.

Salaries of Members.—No. 4 provides for an increase in the salaries of members of the Legislative Assembly from \$1,000 to \$1,500 a year.

Labour Bureau.—By No. 8 a Bureau of Labour is established which is to be attached to the Department of Agriculture, and the object of which is to collect and publish information and statistics relating to employment, wages, and hours of labour throughout the Province; strikes and other labour difficulties; co-operation, trades unions, labour organisations; the relations between capital and labour and other subjects of interest to working men; the commercial, industrial, and sanitary conditions surrounding working men, and such other matters as relate to the permanent prosperity of the industries of the Province.

Workmen's Compensation.—By No. 9 provision is made for compensation to workmen for injuries suffered in the course of their employment. The Act applies only to employment on or in or about a railway, factory, mine, quarry, or engineering work, or in or about a building which is being constructed, repaired, or demolished. The principles upon which compensation is to be granted are generally the same as those laid down in the Acts of the United Kingdom. Actions are to be tried by a judge without a jury; an appeal may, with the consent of the judge, be taken to the Supreme Court sitting *en banc* upon any question of law or mixed question of law and fact, but save for this provision no other appeal is to be allowed. The amount of compensation recoverable under the Act shall not exceed the

¹ *Woodruffe v. Attorney-General for Ontario*, (1908) A.C. 508.

² From the report relating to the self-governing Dominions prepared in the Colonial Office,

estimated earnings during the three years preceding the injury of a person in the same grade employed during these three years in a like employment, or the sum of \$1,800 whichever is larger, but shall not exceed in any case the sum of \$2,000.

Antituberculosis Campaign.—No. 10 incorporates the Trustees of the Saskatchewan Antituberculosis League and authorises them to establish sanatoria for the treatment of incipient or early cases of tuberculosis, and hospitals for the care of advanced cases. The Councils of the several municipalities and local improvement districts, and the Boards of health districts are empowered to make gifts or grants to the Trustees for the purposes contemplated by the Act, and these authorities are empowered to defray the necessary costs of patients who are sent to the sanatoria or hospitals, and who are unable to pay charges for their support.

Maintenance of Deserted Wives.—By No. 14 provision is made for the maintenance of wives deserted by their husbands in similar terms to the Act of British Columbia (No. 61¹).

Companies Law.—Nos. 16 and 17 amend in certain details the Companies Law, and the latter Act deals specially with the position of foreign companies.

Pharmacy.—By No. 32 is created the Pharmaceutical Association of Saskatchewan, and provision is made for the recognition by the Council of the Association of diplomas granted by any Pharmaceutical Association of Great Britain, or certificates from any Pharmaceutical College in the Dominion of Canada, provided that such associations or colleges accept without further examinations certificates of the Saskatchewan Pharmaceutical Association.

6. PROVINCE OF ONTARIO.

[*Contributed by* J. D. CASSWELL, ESQ.]

Acts passed—161.

Moneylenders (No. 30).—Where a moneylending transaction is found to be harsh and unconscionable, the debtor is protected by extensive powers being given to the Court to reopen the transaction and take an account; to reopen any settlement or statement of account or any agreement purporting to close previous dealings and create a new obligation; to order the creditor to pay any excess which may be found due, and to set aside, wholly or in part, or revise or alter any security given or agreement made in respect of the money lent.

The provisions of this Act deal also with the registration of moneylenders and the enforcement of penalties in default of registration. Further by

¹ See *supra*, p. 421.

s. 14 those who induce persons to borrow from them by means of fraudulent statements or the concealment of material facts are made liable to a penalty not exceeding \$500.

Wharfs and Harbours (No. 32).—By this Act every company incorporated for constructing a pier or wharf, for dredging, deepening or making a harbour, or for the erection of a dry dock and marine railway connected therewith, is empowered to detain vessels and goods and sell them to pay tolls and other dues.

Ontario Railway and Municipal Board Act (No. 37) is amended by the insertion of an important clause giving the Board power to regulate the hours of work of conductors and motormen employees. It is enacted that an employee is in no case to be permitted to work for more than six days in a week or ten hours per day, and "whenever practicable and reasonable" such ten hours' work must be performed within twelve consecutive hours.

The penalty for contravening these provisions is fixed at not less than \$100 and not more than \$250.

Municipal Franchises.—No. 42 enacts that, except in four specified cases, municipal councils must not grant franchises to any individual, firm, or company, without the assent of the electors. By "franchise" is meant the right to use or occupy highways or to construct or operate any railway, street railway or public utility, or to supply lighting, heat, power, or steam.

Public Parks (No. 46).—This Act provides for the establishment of parks and similar grounds. On the petition of a certain number of electors praying for the adoption of this Act, the council of any county, city, town, or village is empowered, but not compelled, to pass a by-law giving effect to the petition with the assent of the electors qualified to vote at municipal elections.

The control of parks established under this Act will be vested in each case in a Board of Park Management, for whose constitution and powers full provision is made. The Board may acquire lands of a limited area, and property may be granted to a municipality for park purposes.

The Highway Travel Act.—No. 47 enacts numerous rules of the road for the observance of those who are in charge of vehicles and traction engines, and also horsemen and cyclists. In nearly every case the person overtaken by, or meeting any other person riding or driving, is instructed to "turn quietly to the right." The racing or furious driving of any animal, shouting and the use of blasphemous or indecent language on any highway is forbidden. Another provision empowers any one having the superintendence of a bridge to affix a notice thereto forbidding riding or driving over the bridge at a faster rate than a walk.

Motor Vehicles (No. 48).—The Motor Vehicles Act amends the law with regard to the speed and operation of motor vehicles on highways, the word "highway" being made to include public park, park-way, and

drive-way. A new provision enacts that where a motor vehicle meets or overtakes a street car, which is stationary for the purpose of taking on or discharging passengers, the motor vehicle shall not pass the car on the side on which the passengers get on or off until the car has started and the passengers have "gotten safely on to the side of the street."

Protection of Bees (No. 72).—This Act has been passed to prevent the spraying of fruit trees while in bloom with any mixture containing Paris green or any other poisonous substance injurious to bees.

Adolescent School Attendance (No. 77).—In this Act the word "adolescent" means a young person of either sex who has passed the High School Entrance Examination, or completed the course of the fourth form of the public schools, or an equivalent course, and is under the age of seventeen, or who is not less than fourteen nor more than seventeen years of age. This Act gives powers to School Boards in the exercise of which any Board may pass by-laws requiring the attendance of adolescents in the city, town, or village under the jurisdiction of the Board at day or evening classes established by the Board, or at some other classes or school in the municipality.

Such by-laws may provide for :

- (a) Compulsory attendance at classes ;
- (b) The establishment of such classes ;
- (c) The age of compulsory attendance, not exceeding seventeen years ;
- (d) Prescribing courses of study and instructors ;
- (e) Special classes for either sex or for particular occupations ;
- (f) Fixing the seasons and number of hours for compulsory attendance.

These by-laws will come into force at the expiration of thirty days from their passing, unless a petition is filed praying that they be submitted to the electors.

The following adolescents will be exempt :

- (a) Those declared exempt by by-law ;
- (b) Those to whom special exemption has been granted by the Board ;
- (c) Those who cannot attend owing to sickness or physical defect ; and
- (d) Those who have obtained a Junior High School Diploma or the equivalent thereof.

Those who are employing adolescents must give notice to the Board stating the hours of employment. A penalty is imposed upon any one who illegally employs an adolescent when he should be attending classes, who employs an adolescent for such a time as together with the hours of compulsory attendance exceeds the number of hours allowed by law for adolescent labour, and any parent or guardian who has by wilful default or

neglect suffered the employment of an adolescent in violation of a by-law, or suffered the adolescent to violate any by-law requiring his attendance at the classes.

Houses of Refuge (No. 82).—The law respecting these institutions is thoroughly revised and amended. They are provided by the corporation of every county for the reception of :

- (a) Poor and indigent persons who are incapable of supporting themselves ;
- (b) Persons without means of maintaining themselves and able to work, who do not do so ;
- (c) Feeble-minded persons not fit subjects for commitment to hospitals for the insane, or to hospitals for idiots, but for whom special care is necessary.

New and special provisions have been inserted in the Act for the detention of female inmates between the ages of sixteen and forty-five years, who are so feeble-minded as to be unable to take care of themselves if discharged.

No. 83 provides for the establishment of Houses of Refuge in Provisional Judicial Districts. The management is placed in the hands of a corporation consisting of two persons resident in the district. These will be appointed by the Lieutenant-Governor in Council, and will hold their office for three years. Grants may be made in certain cases from the Consolidated Revenue Fund, and in every case under the Hospitals and Charitable Institutions Act a House of Refuge will be entitled to 7 cents per day for each inmate.

Hospitals and Charities (No. 85).—To a certain extent this chapter re-enacts the law with regard to State aid for hospitals and other charitable institutions, but numerous additions have been made, of which the following may be mentioned :

(A) *Public Hospitals*.—Every hospital receiving aid under the Act must provide reasonable facilities for giving clinical instruction to medical students of any adjacent university.

No hospital receiving aid may refuse to admit and care for a patient having tubercular disease, nor may it refuse to admit any sick person suffering from any disease other than a communicable disease.

The right of expropriating land near to the hospitals is given to the governing bodies ; but only where the Inspector reports that it is necessary and approves the plans submitted to him, and his report is approved by the Lieutenant-Governor in Council.

Various provisions deal with the support of indigent patients by the municipalities in which such patients were resident. The employer is made liable where the patient comes from an unorganised township.

Every employer of labour having more than ten persons in his employ, and having a contract for the medical and surgical care of his employees, is made liable for the maintenance of an employee in any public hospital, but

not at a higher rate than the actual cost per day for maintenance at the hospital.

(B) *Private Hospitals*.—No house can be used as a private hospital without a licence, which can be obtained only by application, giving full details, to the Provincial Secretary.

Every such house must be approved by the Inspector.

Rules are laid down dealing with the continuance, transfer, and revocation of licences. A licence may at any time be revoked on the ground (*inter alia*) that in the opinion of the Inspector the hospital premises are insanitary, or without proper fire protection, or the hospital is managed or conducted in such a manner that the revocation of the licence is required in the public interest.

Further, every licensed hospital must have a resident acting superintendent, must keep a register of patients, and must be open at all times to inspection by the Inspector. The Inspector is also empowered to enter unlicensed premises if he believes the same to be used as a private hospital.

MISCELLANEOUS ENACTMENTS.

Barberry Shrub Preservation Act (No. 70).

Barrister's Act re-enacted and amended (No. 27).

Beaches, Act respecting removal of sand and gravel from (No. 64).

Companies Act, the company law amended (No. 31).

Ditches and Watercourses, law amended with few additions (No. 74).

Dog Tax and Sheep Protection Act passed (No. 65).

Foul Brood among Bees, law re-enacted (No. 73).

Game and Fisheries Act amended (No. 75).

Gaming, law respecting, amended (No. 56).

Ginseng, extermination of, prohibited (No. 71).

Highway Improvement Act amended (No. 11). Supplemented by an Act respecting aid from the Dominion of Canada for Highway Construction (No. 12).

Industrial Farms, law respecting, amended (No. 78).

Insurance Act amended with few additions (No. 33).

Landlord and Tenant Act amended, introduction of clause allowing landlord to re-enter when tenant convicted of keeping disorderly house (No. 25).

Land Titles Act, section added dealing with title to ores, mines, and minerals reserved to the Crown (No. 10).

Law Society, law respecting, amended (No. 26).

Liquor Licences, law amended (No. 55).

Loan and Trust Corporations amending Act (No. 34).

Maternity Boarding Houses Act passed (No. 60).

Mining Act amended (No. 8).

Municipal Amendment Act (No. 40).

Ontario College of Art, established for training art students and teachers (No. 79).

Pounds, Act respecting (No. 66).

Power Commission Act amended (No. 14).

Privy Council Appeals Act amended (No. 18).

Province of Ontario, consent to extension of (No. 3).

Public Health, law respecting, re-enacted with amendments (No. 58).

Religious Institutions, law respecting property of, re-enacted (No. 81).

Royal Ontario Museum, established to illustrate natural history, etc. (No. 80).

School Laws Act amended (No. 76).

Snow Fences Act (No. 52).

Snow Roads Act (No. 49).

Solicitors Act amended (No. 28).

Stallions, enrolment and inspection of (No. 67).

Statute Law Amendment Act, 1912 (No. 17).

Surrogate Courts Act amended (No. 20).

Telephones, law in part redrafted and amended (No. 38).

Theatres and Cinematographs Act amended (No. 54).

Toll Roads, law respecting, amended (No. 50).

Tolls, exemptions from, granted in certain cases (No. 51).

Traction Engines, law respecting, amended (No. 53).

Vaccination and Inoculation, law re-enacted (No. 59).

7. PROVINCE OF QUEBEC.

[Contributed by J. D. CASSWELL, ESQ.]

Acts passed—150.

The Abolition of Toll-bridges and Turnpike Roads.—This is provided for by No. 2. Tolls may now be abolished by private agreement or expropriation, and indemnity may be paid to the owners within five years by the Lieutenant-Governor in Council. Special provisions are laid down for cases where the tolls may be abolished by expropriation, the Quebec Public Utilities Commission taking the place of arbitrators.

Metropolitan Parks Commission (No. 8).—A permanent commission of seven is established to supervise the creation of a system of parks, improved means of communication, and model dwellings for the working classes on the island of Montreal and its neighbourhood. This Commission is empowered to make regulations, subject to ratification by the Lieutenant-Governor in Council, to acquire property which shall be exempt from taxes, and to inquire into the question of the condition of the working-class dwellings and make an annual report thereon to the Legislative Assembly.

The Quebec Election Act.—This Act is amended by No. 10. The word “domicile” is defined as “the place where a person has his principal establishment,” and rules are laid down with regard to the domicile of certain officials, servants, and sons temporarily absent. Another important feature of this Act is a complete list of those persons who are qualified to act as electors.

Licence Law.—No. 12 amends the Quebec Licence Law by reducing the number of inn and restaurant licences in the city of Quebec to sixty and providing that, after such reduction by the Licence Commissioners, the duty on the remaining licences shall be increased by the Lieutenant-Governor in Council, so that the total revenue obtained shall not be less than that obtained before the reduction. The Act further authorises the appointment of a commission to inquire into the sale of intoxicating liquors and as to the changes which it may be expedient to make in the licence law.

The Roads Department (No. 17).—A new department is created and placed under the control of the Minister of Agriculture and Roads, whose duty it will be to supervise the maintenance and improvement of roads throughout the Province.

The law respecting subsidies to certain municipalities and rural and village municipalities is amended by Nos. 21 and 22, and by No. 23 the Government is authorised to contribute to the payment of the interest, and to pay the sinking fund of the sums borrowed by municipalities for the improvement of roads.

Hours of Work (No. 36).—This Act, which applies only to cotton or woollen factories, makes the following additions to the Revised Statutes of 1909: No boy less than eighteen years old, and no child, girl, or woman, may be employed for more than ten hours in any one day, or more than fifty-five hours in any one week; one hour is to be allowed at noon for meals, and the working day must not begin before seven o'clock in the morning, nor end after half-past six in the evening.

Abolition of Costs.—No. 48 provides that in personal actions in which the amount involved does not exceed \$25 no fee shall be granted against the defendant, who can only be condemned to pay the fees of the clerk and costs of service of the action, except where the action is contested, where it is accompanied by a provisional measure, and in certain other specified kinds of actions.

MISCELLANEOUS MINOR ACTS.

Agricultural Societies, law respecting, amended (No. 19).

Canada Medical Act, adoption by Quebec (No. 38).

Charter of the City of Montreal, amending Act (No. 56).

Charter of the City of Quebec, amending Act (No. 55).

Civil Code amended (Nos. 45-7 and 49-51).

Civil Service, the Revised Statutes, 1909, amended (No. 11).

Co-operative Agricultural Associations, law relating to, amended (No. 20).
 Education Act amended in respect to the pension of officers of primary instruction, etc. (No. 24).

Extension of the Province of Quebec by the Annexation of Ungava (No. 7).

Municipal Code amended (Nos. 52-4).

Railways, the Lieutenant-Governor empowered to subsidise the construction of (No. 5).

Representation in the Legislative Assembly, law respecting, amended (No. 9).

Surveyors, law respecting, amended (No. 39).

8. NEW BRUNSWICK.¹

Acts passed—Public General, 55; Local and Personal, 75.

Timber Manufacture.—By No. 10 provision is made that all sales of timber licences by the Surveyor-General, and all licences or permits to cut timber, shall be made subject to the condition that the timber cut shall be manufactured in Canada, whether into paper or pulp, or sawn timber or other articles of commerce or merchandise. A breach of this condition involves the suspension of the licence, but the Surveyor-General may also seize the wood, and unless security is given for its being manufactured in Canada, may sell it. The rule applies to spruce or other soft wood, trees or timber other than pine or poplar. New Brunswick has thus come into line with Ontario and Quebec in prohibiting the exportation of its timber to be manufactured in the United States.

Medical Act.—Chap. 137 of the Revised Statutes of Canada, 1906, provides for the establishment of a Medical Register for Canada. By No. 20, any person registered therein shall be entitled to be entered upon the Medical Register of the Province.

Insurance Tax.—No. 25 is intended to meet the growing practice of corporations and firms with head offices outside the Province insuring their property in New Brunswick through agents outside, the premiums on which insurances are not included in the returns made by the Receiver-General, and so escape the tax of 1 per cent. imposed by chap. 18 of the Consolidated Statutes of 1903. Any insurance company whose head office is not within the Province shall be authorised to transact the business of fire insurance within the Province only if it pays the tax, and if a company not so authorised transacts business it shall be liable to a fine of not less than \$500 or more than \$1,000 for each policy so issued. Stringent provisions are included to enforce the Act, and any person may be prosecutor under it, and shall receive one-half of any fine imposed by the Court.

¹ Based upon the summary in the Report for 1911-12 relating to the self-governing Dominions [Cd. 6091].

Fire Insurance Agents.—No. 26 imposes on travelling fire insurance agents an annual tax of \$100, but exempts from the tax persons resident in the Province who continue to reside there and any person employed after the passing of the Act who has resided for twelve months prior to his employment and has an office or fixed place of business in the Province.

Motor Vehicles.—No. 19 provides for the registration and identification of motor vehicles, and regulates the rate of speed. No person shall operate a motor vehicle in a public highway at a greater rate of speed than is reasonable and proper, having regard to the traffic and use of the highways, or so as to endanger the life or limb of any person or the safety of any property. It shall be *prima facie* evidence of a rate of speed greater than is reasonable and proper if a motor vehicle goes at a greater rate than fifteen miles an hour on a public road where contiguous land is closely built up, or at a greater rate than twelve miles in any city, town, or village, or elsewhere where a clear view of the road cannot be obtained for at least 200 yards at a greater rate than twenty miles an hour. Provision is made for the registration and granting of licences to chauffeurs, and the Secretary of the Department of Public Works shall not grant the licence until he is satisfied that the applicant is a proper person to receive it.

9. PRINCE EDWARD ISLAND.

Acts passed—32.

Income Tax.—The legislation of the session includes an Act (No. 4) to consolidate and amend the several Acts relating to income tax. The amount is $1\frac{1}{2}$ per cent., but incomes under \$500 are exempt and up to \$1,200 the amount is calculated upon the excess over the lower amount. Farmers are exempt, but not incomes derived from fox farms or the breeding of other fur-bearing animals. Married women are taxed on their separate incomes as if sole and unmarried. A discount of 5 per cent. is allowed for prompt payment of tax.

The other Acts of the session are either small amending measures or of a local and personal character.

10. YUKON TERRITORY.

Ordinances passed—10.

With the exception of the Supply Ordinance (No. 9) the legislation of the year consisted only of small amendments.

II. NOVA SCOTIA.¹

Acts passed—Public, 37 ; Local, 64 ; Private, 58.

Education.—The legislation of 1911 includes an elaborate Act, No. 2, to amend and consolidate No. 52 of the Revised Statutes, 1900, the Education Act. The supreme direction of education in the Province is entrusted to the Executive Council as the Council of Public Instruction. The Council has general powers over education and in particular is entrusted with the duty of prescribing text-books, courses of study, and apparatus. The Council has also power to approve recommendations for separate departments or buildings for the different sexes or different colours of pupils, subject to the provision that coloured pupils shall not be excluded from instruction in the public school in the section in which they reside. The executive control, subject to the supervision of the Council, is entrusted to a Superintendent, while the Council and Superintendent receive advice from an Advisory Board of Education consisting of seven members, five appointed by the Lieutenant-Governor in Council and two elected by the licensed teachers engaged in teaching in the public schools in attendance at the Provincial Educational Association. Members of the Board shall hold office for two years, but shall be eligible for re-election or reappointment. In addition there are District Boards which have the important power of condemning school houses or appurtenances or grounds, while in each school section annual school meetings shall be held including all persons liable to pay school rates and poll tax. At these meetings shall be appointed the three trustees by whom the immediate management of the schools in each section is conducted. The trustees are authorised to suspend or dismiss any teacher for gross neglect of duty or immorality or, by unanimous resolution with the approval of the inspector, for incompetency, but an appeal shall lie to the Council, which may reverse the decision of the trustees. It is the duty of the trustees to provide school privileges free of charge for all persons resident in the section between the ages of five and fifteen years and for all persons over fifteen years who wish to attend school, and the school accommodation provided shall be in accordance with the rules laid down by the Council, so that generally there shall be as nearly as possible one teacher and one room for every fifty children. The funds for the payment of teachers and other expenses in connection with schools are provided in part by Provincial grant at fixed rates, in part by grant from the municipalities not exceeding 60 cents per head, and in part from sectional school rates raised by the annual school meeting. Education is free. Each school section decides whether it shall be compulsory or not, and if a vote is taken at the annual meeting that

¹ From the report relating to the self-governing dominions prepared in the Colonial Office (Cd. 6091).

it shall be compulsory the trustees shall collect from the guardians of all children who have not attended school 120 days a sum of \$2 if no attendance has been made, and *pro rata* in the case of those attending under 120 days. Exemption is permitted in the case of children who are of delicate health and resident over two miles from a school, and in the case of children who are being properly educated otherwise. Provision is made for annuities for teachers and also for inspectors.

Vegetation.—By No. 3 provision is made empowering the Governor in Council to make regulations for the prevention of the introduction into the Province of insects, pests, and plant diseases destructive to vegetation.

Fire.—By No. 5 owners, lessees, or proprietors of hotels are required to provide appliances to secure the safety of guests in case of fire, and to keep posted up in each bedroom notices calling attention to the position of fire escapes and containing full directions for their use.

Mines.—No. 10 consolidates the Mines Act¹ and the Acts in amendment thereof. It constitutes a complete code with regard to all kinds of mines in the Province.

Tramways.—No. 11, which deals with the Halifax Electric Tramway Company, is of importance, as it illustrates the use of the Board of Commissioners of the Public Utilities Commission in the control of the Company. The Board may order the company to extend its tracks and may make such rules and orders as to the manner and extent of the use of tracks, and the number, frequency, and routes of cars to be running over the track as the interests of public travel may require. The Board is also authorised to require the cars to be heated and ventilated, and may order additional accommodation to be provided. Provision is also made for the enclosure of the platform of street cars in the months of November to March each year, and the provision of reasonable accommodation for passengers under penalty.

Temperance Act.—By No. 33 several amendments are made in the Nova Scotia Temperance Act.² Any inspector, constable, or other police officer may, for the purpose of detecting or preventing any violation of the Act, enter any hotel, shop, or warehouse and search for liquor. If he finds any liquor which he reasonably believes to be unlawfully kept for sale contrary to the Act, he may seize it and remove it. Provision is also made for appeals from any conviction, order, or dismissal under the Act by the prosecutor or the defendant, except in the case of conviction, judgment, or order made by stipendiary magistrates. The appeal shall be to the Judge of the County Court, who shall determine the case on its merits without regard to defect of form in the procedure.

Among the local Acts the most important is No. 117, which amends and consolidates the Acts regarding the Church of England in the Province.

¹ No. 18 of the Revised Statutes, 1900.

² No. 20 of 1910.

12. NEWFOUNDLAND.

Acts passed—33.

Intoxicating Liquors.—No. 1, by amending the law in relation to the sale of intoxicating liquors, provides for the closing of licensed houses between the hours of 6 p.m. and 9 a.m. No retail licence in addition to those already held shall be granted in any town or settlement until the total number of existing licences in such town or settlement has been reduced to a number bearing the proportion of one retail licence to two hundred male residents of that town of the age of twenty years and upwards. Where by reason of the expiration of a lease of premises upon which a licence becomes extinguished or surrendered, the Licensing Board may grant a licence for other suitable premises in substitution therefor. No licence shall be granted to any person except the occupier of the premises upon which it is proposed to carry on the sale of intoxicating liquors, and a retail licence shall determine and become void upon the transfer of the premises covered by the licence, upon the insolvency of the holder of the licence, and upon the death of the holder of the licence, but the Licensing Board may grant a temporary licence to the Trustee in Insolvency to enable him to realise any intoxicating liquors which may come into his possession, and may grant a licence to the widow or children or other relative of a deceased person who shall reside with and be dependent upon such deceased licensee for support at the time of death. In the case of a child or children under the age of twenty-one years the licence may be granted to their guardian or trustee. The Act further provides for sessions of the Licensing Board being public, and that any person who has been aggrieved by the decision of the Board in relation to the granting or refusing of a licence may appeal to the Supreme Court against such a decision.

Medical Register.—No. 2 amends the Newfoundland Medical Acts, 1896 to 1906, and provides for an appeal from the decision of the Medical Board to the Supreme Court by any person aggrieved by the refusal of that Board to enter his name on the Medical Register. The Court may confirm or disallow the action of the Board, and in the latter case may make an order (1) that the applicant's name be entered on the Register, (2) that the applicant be admitted to examination. The Act provides for the procedure on such appeal.

Motors.—An amendment (No. 3) of the Motor Car Act, 1906,¹ provides for the payment of fees by owners of all motor-cars and motor-cycles operating within the town of St. John's, for the issue of licences, recovery of fees, and providing of alarm bells and lights. One-half of the fees received

¹ See *Legislation of the Empire*, vol. i. p. 384.

are to be retained by the Municipal Council, the remainder to be paid by the Council into the Treasury of the Colony, to be appropriated and applied as may be directed by the Governor in Council for repairs of roads and bridges.

Indians.—An Act (No. 4) respecting the Esquimaux and Indians resident in Labrador provides that it shall be unlawful for any person without the permission of the Governor in Council first obtained to enter into any agreement with the Esquimaux, Nascopee, or Mountaineer Indians to leave the Colony or its dependencies for the purpose of performing any service in any place outside the Colony or its dependencies, or to pay or promise to pay any money, or give or promise to give any article to any Esquimaux, Nascopee, or Mountaineer Indian, as a reward or inducement for leaving the Colony. Any person violating any of the provisions of this Act shall be liable to a penalty not exceeding \$500, or in default to imprisonment not exceeding six months.

Cables.—An agreement is confirmed between his Excellency the Governor and the Direct United States Cable Company, Limited, bearing date March 11, 1911. The Act (No. 7) provides for the admission into this Colony of all apparatus, tools, and equipment which may be necessary for the original installation of the company's stations, and all spare cable which is necessary for repairing purposes, free of duty. A similar contract with the Western Union Telegraph Company, Limited, is confirmed by No. 8.

An agreement, dated March 18, 1911, between the Government and the Newfoundland Produce Company, Limited, for the furnishing of a steamer to ply between St. John's and certain ports in the district of Fogo is confirmed by No. 9, and also an agreement between the same parties entered into on the same date for the furnishing of a steamer to ply between St. John's and certain ports in the district of Fortune Bay.

Education.—By an amendment of the Education Act of 1903,¹ provision is made for the annual appropriation of the additional sum of \$7,000, to be apportioned amongst the several religious denominations of this Colony.

Explosives.—An agreement entered into between his Excellency the Governor and the British-Canadian Explosives Company, Limited, of London, England, is confirmed by No. 11, which provides for the admission into the Colony, free of duty, of all plant, machinery, implements, apparatus, equipment and material necessary for the original installation of the factories and plant comprised in the said agreement, and all raw material for the manufacture of explosives which cannot be provided in Newfoundland. Another Act (No. 12) provides that no person shall have in his possession, or import, store, use or manufacture, whether wholly or in part, or sell any explosive, unless such explosive has been declared by the Minister of Agriculture and Mines to be an authorised explosive; that no person shall carry on any of the following processes, namely, of dividing into its component parts or otherwise breaking up or unmaking any explosive; of making fit for use any

¹ See *Legislation of the Empire*, vol. i. p. 378.

damaged explosive; or of remaking, altering, or repairing any explosives. The Minister of Agriculture and Mines may issue licences for factories and magazines, and no one shall manufacture or store explosives except in licensed factories and magazines. The Minister of Agriculture and Mines may also issue permits for the importation, sale, and transportation of authorised explosives, and no person shall import any explosives into Newfoundland or transport any explosives from such place without such permit. Provision is made respecting the granting of licences, permits for manufacture, alterations of factories or magazines, and the Governor in Council is given authority from time to time to make regulations respecting the classification of explosives and importation, sale, packing, and handling of the same; for inquiries into accidental explosion of explosives, and for other purposes. The Act provides penalties for breaches and the mode of recovery of same.

Provision is made by No. 13 that whenever any kerosene, or paraffin, naphtha or other inflammable oils, or gasoline, or acetylene is landed at any wharf or place in St. John's and not removed and the duty payable thereon paid within thirty-six hours after such landing, the same may be removed by the Customs authorities. The Customs shall have a lien upon all such goods for the cost of removing same. It shall be lawful for any person to have in his possession a quantity of gasoline not exceeding fifty gallons, provided that such gasoline is kept in a secure iron can and stored in the open air and that the can and the place of storage is approved by the Inspector-General of Constabulary.

Potato Disease.—No. 14 provides that the Governor in Council may make such regulations as are deemed necessary to stamp out and prevent the spread in the Colony of potato canker and to prohibit the introduction into the Colony of any potatoes affected by same.

Crown Lands.—An amendment (No. 15) of the Crown Lands Act of 1903¹ provides that it shall be unlawful for the licensee under a licence or option under the provisions of ss. 5, 6, and 7 of the Crown Lands Act, 1903, to cut or take away from said land any trees or timber, except in the course of clearing the said land for *bonâ fide* cultivation or his actual use for building or fencing upon or in connection with the said land or for firewood. The Governor in Council may grant licences to cut timber for a period of ninety-nine years. That no licence shall be granted until notice is published for one month prior to application in the *Royal Gazette*, setting forth the name and address of the applicant and describing with as much certainty as possible the location and boundaries of the land applied for and naming the electoral district in which the same is situate and its approximate area. The Act provides conditions for licences respecting the erection of saw mills and factories and their operation. It further provides for the surveying of a timber land mentioned in an application and makes provisions respecting the cutting of timber, appointment of scalers, forfeiture of mineral leases,

¹ See *Legislation of the Empire*, vol. i, p. 378.

expropriation in the case of submarine leases, and regulations as to bog lands.

Fire Patrol.—Under No. 16 it shall be lawful for the Governor in Council to enter into an agreement with companies and persons who own lands or are interested in timber areas in this Colony for the establishment and maintenance of a Fire Patrol, and to pay out of the revenue of the Colony the sum of \$4,000 annually towards the expenses of such fire patrol.

Forest Fires.—An Act (No. 17) amending 5 Ed. VII. No. 17, entitled "An Act to provide for the protection of Woods against Fires and for other purposes," contains provisions respecting the lighting of fires by parties on lands not owned by them, provision of the most approved and efficient means to prevent the escape of fire from the furnace or ash pan of locomotive engines, the duty of engine-drivers as to the proper application of such appliances, and the duty of engineers, conductors, or train-men with respect to woodlands adjacent to the railway burning or in danger from fire. The Act further provides that every railway company shall make provision for ashes from fire boxes to be left at regular places along its line of railway. The duty is also placed upon any company operating locomotives to make arrangements whereby the Government Engineer, the Chief Ranger, and Assistant Ranger or any other person duly authorised shall be permitted to board any engine and travel on such engine free, and for the giving of every facility and assistance to such parties to examine everything in connection with the said engine and its operation.

Agriculture.—No. 18 authorises the annual expenditure of the sum of \$20,000 by the Minister of Agriculture and Mines for the purposes of the Act of 1910.¹

Seeds.—No. 19 provides that no seeds shall be imported for the purpose of sale without a licence, which licence may be granted by the Minister of Agriculture and Mines. Provision is made for the appointment of an Inspector of Seeds and the powers and duties of such Inspector defined. The Act does not apply to seeds imported otherwise than for sale.

Peat.—An agreement made between his Excellency the Governor and the International Carbonising Company, Limited, for the manufacture of peat is approved and confirmed by No. 20, and authority is given for the admission into the Colony, free of duty, of all construction material and machinery for factories erected under the said agreement, both for original construction thereof and for further extension of the same, but not in substitution for old. No. 21 extends the period of payment of the bonus provided under the Act of 1905² from five years to ten years.

Copper Smelting.—No. 22 provides that there shall be annually paid for the period of twenty years from the date of the passing of this Act to the owner of every smelter for smelting copper ore in this Colony, a sum equal

¹ 10 Ed. VII. No. 18. See Journal, N.S. xii. p. 492.

² 5 Ed. VII. No. 18. See *Legislation of the Empire*, vol. i. p. 381.

to $3\frac{1}{2}$ per cent. upon the capital invested by him in the work of smelting copper, provided that no payment shall be made in any year in which the said smelter is not *bonâ fide* and continuously operated, and that no greater sum than an amount equal to $3\frac{1}{2}$ per cent. on \$50,000 shall be paid in any year.

Cold Storage.—Under No. 23 the agreement entered into between his Excellency the Governor and Charles Newell Trefethen and Joseph Walker Lord, both of Portland, in the State of Maine, in the United States of America, for the establishment of cold storage plants is approved and confirmed. Provision is made for granting to the parties, free of charge, out of ungranted waste Crown lands, such lands for sites for plants, and such licences to cut timber, and such water powers as are provided for in the said agreement. Authority is given for the admission into the Colony, free of duty, of all plant, machinery, implements, apparatus, and material necessary for the original installation of cold storage plants, smoke-houses and factories, and for the extension of same, but not in substitution for old; ammonia for refrigerating purposes; vegetable oils for use in curing fish; tin metal for cans, and solder; gasoline engines; gasoline; printed and lithographed labels; and mineral and lubricating oils for machinery. The amount payable by the Government under the agreement shall not in any year exceed 5 per cent. upon the actual cash capital invested by the parties in the said plant, and shall in no case exceed the sum of \$25,000 in any one year.

Pilotage.—No. 24 provides for the appointment by the Governor in Council of five Commissioners of Pilots, three of whom shall form a quorum. The Commissioners have authority to license twelve pilots, who shall undergo an examination as to their fitness. The Commissioners have authority to establish by-laws for the regulation of pilots, for extra remuneration in cases of an extraordinary nature, and for the adjustment and decision of questions arising between masters of vessels and pilots and others respecting pilotage. Commissioners may make regulations, subject to the approval of the Governor in Council, for the management, control, and operation of the pilot cutter and for the government of licensed pilots, and may also make rules for the punishment of any breach of the regulations made by them by the withdrawal or suspension of the licence or certificate of the pilot guilty of such breach or by the infliction of a penalty. The Act also makes provisions respecting rates of pilotage, carrying of flags by vessels, payment of pilotage, penalty for taking pilot to sea, exemption of vessels from pilotage, unlicensed persons acting in certain cases. Provision is also made respecting the power of Commissioners in deciding disputes and with reference to the recovery of penalties, rights of appeal, applications and dispositions of Pilots' Fund, returns by Commissioners, and superannuation of pilots. Under the Act the Commissioners have authority to appoint a Secretary and Clerk, whose salary is to be paid out of any funds in their hands.

Beavers.—Under No. 26 it is unlawful for any person to purchase,

receive, or have in his possession any skin or carcass of a beaver killed or taken in violation of the provisions of the Act of 1910¹ under a penalty not exceeding \$200 or in default imprisonment not exceeding two months for the first offence, and for the second offence imprisonment for six months with hard labour without the option of a fine. Possession of a carcass or skin of a beaver shall be *prima facie* evidence of a violation of the Act.

Old Age Pensions.—No. 29 provides for the payment of old age pensions to persons who have attained the age of seventy-five years who can satisfy the Governor in Council that for not less than twenty years before the receipt of any sum on account of a pension the applicant has had residence in this Colony and that his circumstances or means of support are such as to render a pension necessary for his support. Power is given the Governor in Council to make regulations for the carrying of this Act into effect, and it is expressly declared that an assignment of or charge on, and every agreement to assign or charge, an old age pension shall be void. It is further provided that a pension shall not be liable to attachment or execution, nor shall it pass upon the insolvency of the pensioner to the trustee or any person acting on behalf of his creditors.

Finance.—No. 32 provides for the raising, by the sale of debenture bonds of the Colony, of a sum not exceeding \$520,000.

13. BERMUDA.

[Contributed by the HON. REGINALD GRAY, K.C., *Attorney-General.*]

Acts passed—49.

Appeals (No. 1).—This Act regulates appeals from the Supreme Court to His Majesty in Council. Appeals lie (1) as of right, from any final judgment of the Court, where the matter in dispute on the appeal amounts to or is of the value of £300 or upwards, or where the appeal involves, directly or indirectly, some claim or question to or respecting property, or some civil right amounting to or of the value of £300 or upwards; and (2) at the discretion of the Court, from any other judgment of the Court, whether final or interlocutory, if, in the opinion of the Court, the question involved in the appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council for decision.

Leave to appeal is granted on security being given in a sum not exceeding £500 for the prosecution of the appeal and the payment of costs.

Aliens (No. 3).—Under the Alien Act, 1907, aliens can acquire land by deed, but only with the previous sanction of the Governor in Council. This

¹ 10 Ed. VII. No. 30.

Act limits the operation of any such sanction to a period of six months from the date of the certificate.

Copyright (No. 8).—This Act makes some important amendments to the Fine Arts Copyright Act, 1910.

Historic Buildings (No. 12).—Provision is made by this Act for the taking over by the Government of certain small islands, the buildings on which were erected early in the seventeenth century by the settlers for purposes of defence, and the Act also provides for the preservation of such buildings.

Advertisements (No. 14).—This Act was passed to prohibit the erection, display, and maintenance of signs and structures upon, above, and over lands, buildings, public streets, and public places for purposes of advertisement or announcement, or similar purposes, with a view to the prevention of unsightly advertisements. Its provisions have, however, been found to be too stringent, and it is probable that they will be shortly relaxed by an amending Act.

Law Officers of the Crown (No. 15).—This Act entitles all future Attorney-Generals and Solicitor-Generals to be *ex-officio* admitted as barristers and attorneys of the Supreme Court of the Colony.

Parliamentary Elections (No. 20).—Under this Act the membership of any member of the Assembly who is appointed to any Government office, in respect of which a salary is payable out of the public treasury, thereupon determines, but he is eligible for re-election unless precluded by the duties of his office or the terms of his appointment.

Revenue (No. 23).—Under the previous Revenue Acts, in estimating the value of imported goods liable to *ad valorem* duty, the invoice value was taken. Under this Act the cost of external packages and the expenses of placing the goods in condition for shipment from the port of shipment in the country from which the goods were directly or indirectly imported are added to the invoice value, and the duty charged thereon.

Fisheries (No. 24).—Harrington Sound is a sheet of water almost entirely land-locked, about two miles long and a mile and a quarter wide, and this Act provides for screening the principal outlet and any minor outlets, so as to convert the Sound into a salt-water fish preserve. It is proposed to keep it stocked with suitable fish for rod and line sport, and to regulate its use by licences. It is said that it will be the only salt-water fish preserve in the Western Hemisphere.

Dentists (No. 25).—Prior to the passing of this Act no provision was made for the registration of dentists. All persons resident in the Islands who had for five years at least consecutively immediately prior to the passing of the Act been in practice as dentists in the Colony were entitled to registration on application made within three months. Other applications for registration are dealt with by a Dental Board, who examine the candidate as to his competency and fitness, and grant a certificate if he proves duly qualified.

Hotel (No. 26).—This Act incorporates with the usual powers the Bermuda-Atlantic Hotel Company, Limited, which contemplates building a large hotel here in the near future for the accommodation of the increasing number of American visitors.

Pilotage (No. 27).—Hitherto the pilot lights in use here have differed from those prevailing elsewhere. The present Act prescribes lights substantially similar to those used in the United Kingdom so far as they could be adopted to the description of boats employed here for piloting.

Consuls (No. 28).—This Act enables reciprocal privileges to be accorded here to the Consular representatives of foreign countries which accord substantial privileges in the matter of customs facilities, or exemption from import duties, to his Majesty's Diplomatic and Consular officers in such countries, or to their families.

Firearms (No. 34).—This Act prohibits the possession or sale of pistols, except for certain specified purposes, without a licence issued by a police magistrate. Provision is made for every licensed dealer to keep a Pistol Sale Register, in which certain particulars are required to be entered with respect to every sale.

X. THE WEST INDIES.

I. THE BAHAMAS (1912).

[Contributed by KENNETH SOLOMON, ESQ., on behalf of the
Bahamas Bar Association.]

The Session has not been a very important one, and the output of seventeen Acts in five and a half months cannot be considered commensurate with the time spent. It must be noticed, however, that eleven other Bills were introduced. Two of these, viz. a Bill relating to lepers and a Bill for the registration of births and deaths—perhaps two of the most important measures of the Session—were passed by the House. They were amended, however, by the Legislative Council, and on their return to the House were not proceeded with. Among the other measures which were either lost or not proceeded with were Bills dealing with motor-boat mufflers, real property tax, the amalgamation of the registries, the Magisterial Department, and the preparation of a new edition of the laws.

Interpretation (No. 1).—By the Interpretation Amendment Act, 1912, the Interpretation Act, 1911, is amended by providing a new definition for the word "Governor."

Prisons (No. 2).—The Prisons Amendment Act, 1912, corrects various clerical errors in the Prisons Act, 1911, and provides that the cat and rod to be used in inflicting punishment shall be of patterns approved by the Governor.

Sick Leave (No. 3).—The Public Officers' Sick Leave Amendment Act, 1912, amends the Public Officers' Sick Leave Act, 1904, by providing a new definition for the term "Public Officer."

Church Disestablishment (No. 4).—By a clerical error the Markets and Slaughter Houses Act, 1911, repealed the whole of the Disestablishment Act, 1869, whereas s. 14 only should have been repealed. The Disestablishment Act, 1869, Revival Act, 1912, brings the Disestablishment Act, 1869, into force again with the exception of s. 14.

Probate Bonds (No. 5).—The Probate Amendment Act, 1912, relieves the Imperial Public Trustee from the giving of bonds in probate matters. But he is subject to the same liabilities and duties, and must pay all fees of Court and stamp duties as if he had given the bond.

Ice (No. 6).—The Ice Amendment Act, 1912, gives the Governor in Council power to increase the subsidy payable for the supply of ice from £100 to £300, and also empowers the Executive in the event of their being unable to obtain a contract for the supply of ice to cause an adequate supply to be kept in the Public Ice House. The contract may be entered into for any period *not exceeding* five years. An expense clause is also added.

Board of Works (No. 7).—The Board of Works (New Providence) Act, 1912, empowers the Board of Works for the Island of New Providence to purchase lands, and vests in the Board all lands acquired since July 1907. The execution of deeds by the Board is also provided for.

Cinematograph Exhibitions (No. 8).—By the Cinematograph Act, 1912, no exhibition of pictures can be given without a licence. The power to issue licences is given to the Commandant of Police, who may, by himself or his deputy, visit any premises in which an exhibition is about to be given in order to see if the law is being complied with. No obscene pictures, etc., are to be exhibited, and the Governor in Council is empowered to make rules. The Act does not apply to private exhibitions, and there is a penalty clause.

Vicar Forane Incorporation (No. 9).—The Roman Catholic Vicar Forane Incorporation Act, 1911, constituted the Roman Catholic Vicar Forane in the Bahamas and his successors in office a corporation, and vested in such corporation all property in the Colony then vested in the Roman Catholic Archbishop of New York and the Very Rev. Chrysostom Schreiner. The Roman Catholic Vicar Forane Amendment Act, 1912, provides that such vesting shall be subject to the rights of the King, his heirs and successors, and of all bodies politic and corporate, etc.

Oaths (No. 10).—The Oaths Act, 1912, consolidates and amends previous Acts and provides additional forms of oath.

Pensions (No. 11).—The Pensions Amendment Act, 1912, makes the offices of assistant matron, assistant turnkey, school master, and sick nurse of the Prison Department pensionable offices.

Supreme Court (No. 12).—The Supreme Court Amendment Act, 1912,

provides that an appeal shall lie to the King in Council in a civil action subject to such restrictions, etc., as may be prescribed by His Majesty in Council, but the value of the property in dispute, etc., must be of the value of £300. (The previous amount was £500). Where the amount is less than £300 the leave of the Court must be obtained.

Health (No. 13).—The Health Amendment Act, 1912, consolidates and amends the previous Acts relating to the Board of Health.

Telephones (No. 14).—The Telephone Amendment Act, 1912, places the telephone operators into three classes and provides salaries accordingly.

Manufactories (No. 15).—The Manufactories Encouragement Amendment Act, 1912, empowers the Governor in Council to permit any agricultural or marine product to be manufactured in an "agricultural factory" whether the same is an agricultural product of the Colony or not.

Expiring Laws (No. 16).—The Expiring Laws Continuance Act, 1912, continues three Acts in force for one year.

Supply (No. 17).—The Appropriation Act, 1912, grants £26,548 7s. 2d. for the performance of public works, and for the payment of various claims against the Colony.

RETURN SHOWING ORIGIN AND FATE OF BILLS.

Place of Origin.	Number of Bills Introduced.	Number of Bills not passed.	Number of Bills that became Acts.
HOUSE OF ASSEMBLY:			
Government	23	10	13
Select Committees	4	1	3
Private Members	1	—	1

2. BARBADOS.

[Contributed by WALLWYN P. B. SHEPHEARD, ESQ.]

Acts passed—18.¹

Bank Notes.—The Bank Notes Act, 1911, for the purpose of the Act extends the meaning of "bank note" to "all bills and notes for the payment of money to bearer on demand issued by any banker" and of "banker" to "all companies incorporated by Charter or under the authority of an Act of Parliament or the law of any Colony carrying on the business of banking." The Act makes it unlawful for any others than bankers to issue bank notes under a penalty of £500, and under a like penalty for bankers to

¹ Acts are passed by the Governor, the Council, and the Assembly of Barbados, and are numbered consecutively for the calendar year.

issue bank notes otherwise than in accordance with the provisions of the Act.

The procedure by bankers desiring to issue bank notes, the restrictions and the conditions under which notes may be issued, are set forth in the Act, and in certain cases the Secretary of State for the Colonies may upon application of a banker dispense with the requirements of the Act from the operation of which the Colonial Bank is excepted. The Act is to come into operation by Proclamation of the Governor.

Judicature.—The Common Pleas Act, 1911, constitutes as at present one Court of Common Pleas for the island called "The Court of Common Pleas for Barbados," to consist of the Chief Justice of the Colony as Judge, with cognisance of all pleas and jurisdiction in all cases as fully and amply in Barbados as His Majesty's Courts of Common Pleas, King's Bench, and Exchequer had in England on July 29, 1853, with such additional jurisdiction as the Act provides.

Relief on equitable grounds to either plaintiff or defendant as the Court of Chancery might give before the Act is within the jurisdiction of the Court of Common Pleas constituted by the Act, and such Court shall recognise and give effect to all equitable estates, titles, and rights in any cause or matter in the same manner as the Court of Chancery before the passing of the Act would have recognised them. The Court is empowered to determine completely and finally all matters in controversy between litigants, and all questions as to custody and education of infants by the rules of equity, and the rules of equity shall prevail over the rules of common law.

The procedure is set forth in various sections dealing with rules and orders, writs, service of writs, appearance and default of appearance, parties, third-parties, change of parties, joinder of causes of action, statement of claim, defence and counterclaim, payment into and out of Court, tender, reply and subsequent pleadings, proceedings in lieu of demurrer, discontinuance, default of pleading, discovery and inspection, admissions, special case and issues of fact without pleadings, trial, new trial, judgment, etc., mandamus and prohibition, arbitration and costs. Existing and pending proceedings in the Court of Common Pleas at the commencement of the Act are exempt from its operation.

Vestries.—The Vestries Act, 1911, consolidates the Acts of Barbados relating to vestries. It defines the constitution of the vestry of each parish under the rector as chairman, the vestry meeting, qualification as owner or occupier of property for election on the vestry, procedure at elections of vestrymen, duties of collectors of rates, parochial treasurers, auditors, churchwardens, control of chapels, burial grounds, contracts for water supply, parochial registers, returns for assessment of rates, assessors, assessments, appeals, recovery of rates, etc., temporary loans by vestries, forms of statement of revenue and expenditure.

Medical Registration.—The Medical Registration Act, 1911, establishes

a register to be kept by the Registrar of Barbados and to be called "The Medical Register," upon which the names of all medical practitioners who desire to be recognised as "legally qualified medical practitioners" must be entered. The Act prescribes the procedure and qualifications for registration, the privileges of registered practitioners, fees, and penalties, and has schedules of statutory qualifications for registration and forms of certificates by the assessors constituted by the Act of their examination of the qualifications entitling applicant to entry on register.

Post Office.—The Post Office Act, 1911, regulates the collection and delivery of all postal packets, appointment of Colonial Postmaster with exclusive privilege within the island of receiving, collecting, and delivering all letters within or going to or coming from parts beyond the island. The Act fixes the postage for inland letters at the rate of 1*d.* for one ounce or under, and 1*d.* additional for each additional ounce or part of an ounce, and for either local or foreign newspapers (inland post) $\frac{1}{4}$ *d.* for first four ounces and under of weight, and an additional $\frac{1}{4}$ *d.* for every additional four ounces or portion of four ounces, and for book packets, etc. (inland post), for first four ounces and under of weight $\frac{1}{2}$ *d.*, and an additional $\frac{1}{2}$ *d.* for each additional four ounces or portion of four ounces.

The Act prescribes regulations for ship letters, money orders, British postal orders, membership of Postal Union, Parcel Post, insurance of postal parcels, etc., also penalties for Post Office offences, and criminal prosecution of persons robbing, etc., the mails, forging stamps, and other criminal offences.

Co-operative Sugar Factories.—The Central Sugar Factories Act, 1911, empowers the Sugar Industry Agricultural Bank to raise by the issue of debentures to an amount not exceeding £300,000, to be applied in the construction and equipment of central sugar factories. The moneys so raised are to be lent at interest not exceeding 5 per cent. to the owners of groups of plantations who are able to comply with the conditions prescribed by the Act, and as and when the advance for the erection of a factory has been fully repaid the Act vests the property in the factory in the owners of the group of plantations who have availed themselves of the Act.

Tramways.—The Bridgetown Tramways Company (Limited) Act, 1911, vests in the company compulsory and other legislative powers for public tramways in and about any portion of the island, and prescribes the regulations, restrictions, and conditions under which the company are to carry out their work.

Gas Works.—The Gas Works Act, 1911, gives the Barbados Gas Company, Ltd., powers over the whole island for the supply of gas, subject to the conditions, regulations, and restrictions prescribed by the Act for the necessary works and in respect of the price to be charged to consumers and public authorities for supply of gas.

Ecclesiastical.—The Anglican Church (Barbados) Act, 1911, consolidates

the Acts relating to the Anglican Church of Barbados. The Act prescribes the procedure for the election of a bishop on a vacancy occurring in the see, and the annual stipend to be paid to the Bishop, the modes of appointing rectors and curates of parishes and the salaries to be paid them, the incorporation of dean and canons under the title of the Dean and Chapter of St. Michael's Cathedral, the appointment of canons, constitution of the Diocesan Synod of Barbados, and its incorporation under that name.

The Act prescribes the forms of declaration of assent to the Thirty-nine Articles of religion, against simony, stipendiary curates, and the oaths and disciplinary powers of the Bishop over the clergy within his jurisdiction.

The Act declares all laws, ordinances, and canons ecclesiastical which were on June 7, 1825, in force in England with respect to ecclesiastical regimen and jurisdiction over the clergy therein to be in force in Barbados, and regulates the procedure in such matters.

Other sections of the Act relate to the absence from Barbados of clergymen holding cures within the island, proceedings for declaring benefices vacant, and appointments thereto, the public services, pews, etc., in parish churches and chapels, pew rents and reservation of pews and sittings without rent or fee for poor parishioners, and consecration of churchyards, etc.

Habitual Criminals.—The Habitual Criminals (Detention) Act, 1911, enables the Court on passing a sentence of penal servitude on a prisoner found by the jury to be a habitual criminal to pass a further sentence for detention for a further period after expiration of the original sentence.

The Act gives the Governor power to discharge on licence prisoners undergoing preventive detention.

Agriculture: "Love Vine" (genus *Cuscuta*).—The Love Vine (Eradication) Act, 1911, enables the officers of the Local Department of Agriculture to enter upon any plantation to search for any "Love Vine" and serve notices on the owner for the prompt eradication of the noxious plant.

3. BRITISH GUIANA (1912).

[*Contributed by* SIR T. CROSSLEY RAYNER, *Chief Justice.*]

During the year nineteen Ordinances were passed, all of them being of the class of public general Ordinances, no private Ordinances having been passed in 1912. No legislation of great importance was passed during the year, the chief Ordinances being the following :

Customs Duties and Tax (Nos. 1 and 2).—These are the two Ordinances under which the revenue of the Colony for the financial year 1912-13 is raised ; the Combined Court, which alone has power to levy taxes, always refuses to authorise the raising of revenue for more than a year at a time, and consequently the customs duties and the inland revenue (taxes) have to be re-enacted annually. On this occasion the Combined Court, instead of

enacting a new Customs Duties Ordinance, continued the operation of the one passed for the previous year. Arrangements were then being made for reciprocal trade relations with Canada, which, it was anticipated, would necessitate considerable alterations in the customs duties, and it was not considered worth while to pass a complete customs tariff, which might have to be superseded by a new one before many months had passed. The new tariff to give effect to the arrangement which has been concluded with Canada had not been passed by the end of 1912, and the old tariff remained in force.

Motor-Cars (No. 5).—This Ordinance was passed to regulate the driving of motor-cars, a large number of which are now in use in the Colony. The Ordinance follows in the main the English Motor-Car Act, 1903 (3 Ed. VII. c. 36), except that no person is to be allowed to drive a car unless he has a certificate of competency, which is to be granted by the Local Government Board after examination, and there is no speed limit except in the towns, where it is to be eighteen miles an hour, but power is given to the Local Government Board to fix a speed limit where necessary in other places. This Ordinance has not yet been brought into operation.

Bail (No. 6).—This Ordinance amends the law as to granting bail to persons arrested for minor offences dealt with on summary conviction, and allows a police officer to give bail when the offender is arrested without a warrant. Where he is arrested on a warrant, the magistrate at the time of issuing the warrant is to endorse on it the amount of bail to be required, and then, on the arrest of the offender, a police officer can admit him to bail in that amount.

Clergy List (No. 7).—Formerly the clergy of the Church of England and of the Church of Scotland were paid out of the colonial revenue, and were practically members of the civil service of the Colony. This arrangement was altered some years ago, and now an annual grant is made to the various churches and religious bodies working in the Colony. The vested rights of the clergy of the Church of England and the Church of Scotland appointed before the present system began are respected, and the salaries are paid so long as they continue to hold their cures in the Colony, but on retirement or death their salaries fall into the lump sum voted to their church. The grants made to the various churches are usually voted by the Combined Court for a term of years, and this Ordinance secures the grants for five years, from 1912 to 1917, and under it the various bodies named in the schedule to it will receive the grants during those years.

Patent Medicines (No. 8).—In 1911 the Combined Court enacted an excise duty on patent medicines, in which there is a large trade done in the Colony. This Ordinance prescribes the mode in which that duty is to be collected, and enacts that it is to be paid by means of labels or stamps affixed to the bottles or other packages in which the medicines are sold, as is done in England. Some difficulty has been experienced in knowing

precisely upon what articles duty is to be paid. The Tax Ordinance (s. 16) simply imposes the duty upon "all patent or proprietary medicines" instead of, as in England, enumerating in a schedule the various articles and preparations upon which it is to be paid. The Ordinance which prescribes the mode of collecting the duty contains a section defining patent or proprietary medicines as those which "are in any way recommended on the label of any bottle or package thereof or by advertisement as a remedy for disorder." It has been contended that this definition includes articles upon which it was never intended to levy the duty, and it has already judicial interpretation, and the question may again engage the attention of the legislature.

Public Trustee (No. 9).—In 1910, by Ordinance No. 15 of that year, a Public Trustee was constituted for the Colony, the Ordinance following in the main the provisions of the Public Trustee Act, 1906 (6 Ed. VII. c. 55), but no provision was made similar to s. 7 of the Act which makes the Consolidated Fund of the United Kingdom liable for the acts or defaults of the Public Trustee in cases where a private trustee would be personally liable. In 1911, however, the Combined Court passed a resolution in much the same terms as s. 7 of the Act to make the general revenue of the Colony liable for the Public Trustee of the Colony, and this Ordinance accordingly amends the Public Trustee Ordinance, 1912, and carries into effect the above resolution by enacting a section similar to s. 7 of the English Act.

Cinematographs (No. 11).—This Ordinance was passed to regulate cinematograph entertainments both as regards the character of the entertainment and the safety of the spectators. No such entertainment is to be given or advertised without a permit from the Inspector-General of Police, who must be furnished with a description of the scenes to be presented. The Governor in Council is empowered to make regulations for preventing accidents and securing the safety of the public.

Foreign Reprints of Books (No. 12).—By an Ordinance passed in 1851 a duty of 20 per cent. *ad valorem* was imposed on foreign reprints of English copyright books, which amount, less a deduction for expenses, was paid to the owner of the copyright. The Copyright Act, 1911,¹ enables owners of copyright to protect themselves, and as the Act extends to this Colony, there is now no necessity for the provisions of the above Ordinance, and it is therefore repealed.

Notification of Births (No. 13).—This Ordinance, which is practically a transcript of the Notification of Births Act, 1907,² was passed as one means of grappling with the high rate of infant mortality in this Colony. It does not apply to the Colony generally, but only in those areas the local authorities of which adopt it. Under its provisions notice is to be given of every birth within the area in which the Ordinance is adopted, within six hours of the birth, to the Medical Officer of Health. The intention is that

¹ 1 & 2 Geo. V. c. 46.

² 7 Ed. VII. c. 40.

the mother shall be visited and, where necessary, help given to enable her to rear the child.

Tobacco (No. 14).—This Ordinance was passed to provide for the cultivation and manufacture of tobacco in the Colony. The object of the Ordinance is to safeguard the revenue derived from imported tobacco. It provides that no one may cultivate or manufacture tobacco without a licence from the Governor in Council and enables regulations to be made as to the conditions under which it may be cultivated or manufactured, and for securing and collecting the duty payable on tobacco grown in the Colony.

Emigration (No. 17).—This Ordinance allows no one to recruit or engage labourers in the Colony for service out of the Colony unless he has the written permission of the Governor. The object of the Ordinance is to prevent ignorant persons being induced by irresponsible persons to leave their homes by promises of high wages and go to foreign countries where they may be stranded and left destitute, as has sometimes happened.

Civil List (No. 19).—This Ordinance, passed in pursuance of a resolution of the Combined Court, secures the salaries of the Governor and certain of the higher officials for a term of five years. Similar Ordinances have been passed for many years past, and in return for the grant of this civil list the Crown by Order in Council grants to the Combined Court, during the term for which the civil list is granted, the privilege of discussing the annual estimates, which otherwise under the Constitution of the Colony it would not have.

4. BRITISH HONDURAS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—26.¹

Lepers (No. 3).—The Lepers Ordinance, 1911, constitutes a leper asylum for the segregation and treatment of lepers. Persons knowing of the existence of a leper are to give information to the District Commissioners, and thereupon the Governor is empowered to order the removal of the leper to the asylum, and his detention there upon a certificate of two doctors that the disease is leprosy.

Privy Council Appeals (No. 5).—The Privy Council Appeals Ordinance, 1911, declares that an appeal to the Privy Council shall lie (*a*) as of right from any final judgment of the Supreme Court of the Colony where the matter in litigation is of the value of \$1,500 or upwards, and (*b*) at the discretion of the Court if the question involved is one which ought to be submitted to the Privy Council. The Court is empowered to regulate the proceedings, and supervise the preparation of the record for the purpose of the appeal.

¹ Ordinances are passed by the Governor with the advice and consent of the Legislative Council.

Cattle Branding (No. 9).—The Brands Ordinance, 1911, makes it compulsory on owners of cattle to have the beasts branded with the owner's brand duly registered as provided by the Ordinance.

Proof of Deeds (No. 12).—The Deeds (Proof of Execution) Ordinance, 1911, amends No. 107 of the Consolidated Laws by declaring that deeds executed in His Majesty's dominions out of the Colony are to be proved by the affidavit or declaration of one of the subscribing witnesses, or by the acknowledgment of the parties to the deed sworn or made

- (1) before the mayor of the city or borough in the United Kingdom, and attested under his hand and the public seal of the city, etc.; or
- (2) under the hand and seal of the Governor or others administering the Government, or Chief Justice of any Court of Record of any colony or possession within His Majesty's dominions; or
- (3) attested under the hand and seal of any notary public in His Majesty's dominions,

and in the case of deeds executed at a place outside His Majesty's dominions the same are to be proved by the affidavit or declaration of the witnesses, or by the acknowledgment of the parties sworn or made

- (1) before His Majesty's Ambassador or Consul for that place if attested by the signature or seal of such officer; or
- (2) before and attested under the hand and seal of any Governor or Chief Justice or Judge or notary public certified to be such under the hand and seal of His Majesty's Ambassador or other His Majesty's consular officers; or
- (3) in case there be no such His Majesty's officer then under the hand and seal of such Governor, Chief Justice, or Judge or notary public without such consular certificate.

Public Trustee (No. 24).—The Probate and Administration Ordinance, 1911, exempts the Imperial Public Trustee from the requirement of a bond or security on the grant to him by the Supreme Court of the Colony of probate or administration, or on the sealing with the seal of such Court of any probate or administration granted him in England, but he shall be subject to the same liabilities and duties as if he had given such bond or security.

5. JAMAICA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

Laws passed—38.

Education.—The ordinary limits of age for elementary education in Jamaica are between the completion of six and fourteen years. Provision is now made (No. 2) for grants to kindergarten schools where children may be received between four and nine.

The central governing body for education purposes is in future to be the Jamaica Schools Commission, in lieu of the Board of Education (No. 7).

Valuation.—Provision is made (No. 3) for a new valuation roll for the island. There is a Board of Assessment for each parish and a valuation Commissioner for the whole island, with assistants. The returns to be made by owners of real property are in Jamaica termed “in-givings.” Four previous laws are superseded and repealed.

Public Holidays.—November 9 is substituted for Whit-Monday as a public holiday, and is to be known as “King Edward the Seventh Day.”

Motor Cars.—The power of making regulations under the Law of 1905 is extended, power being given (No. 9) to prohibit or restrict the use of motor-cars on specified bridges or roads. Further regulations may be made for facilitating the identification of cars by numbers and by the entry of further particulars of ownership in the register.

Evidence.—A general Law on the subject of prisoners' evidence follows the English model (No. 10).

Cayman Islands.—The Commissioner may act as judge during a vacancy in that office (No. 11).

Tax Collection.—Arrears of taxes cannot be recovered except within seven years after they became payable (No. 12).

Traction Engines.—A tax of £10 per annum is imposed upon every traction engine using the public roads (No. 16).

Rating.—The rate of 8*d.* per £10 value of property imposed for irrigation by the Law of 1904 is abolished (No. 20).

Tariff.—A new Tariff Law (No. 21) supersedes with amendments the provisions of eight existing laws. The duties are classed under seventy-seven heads, the exemptions under sixty-seven. The Jamaicans do not enjoy a free breakfast table, butter being taxed at 2*d.* per lb., cocoa at 10*s.* per 100 lb., coffee at £1 per 100 lb., flour at 8*d.* per barrel, tea at 1*s.* per lb., and so on.

Administration.—On the death of a person without an heir any real estate in respect of which he dies intestate vests in the Administrator-General when probate or letters of administration have been granted to that officer (No. 23).

Emigration.—The Emigrants Protection Law, 1902, is amended by a provision that no permit for emigration is required in the case of any person not a native of or domiciled in Jamaica. The Governor also may exempt any person or class of persons from the obligation to obtain a permit (No. 26).

Prevention of Noises.—An excellent law, which might be adopted elsewhere, makes it an offence to sound or play upon any musical or noisy instrument or make any noise whatever “between 11 p.m. and 6 a.m., after a request to desist.” There are limitations, however; the request must be founded on illness of some person, or on the loudness of the nuisance—

viz. that it can be heard two chains off—or on any other reasonable ground (No. 31).

Diseases of Plants.—The Governor may make rules for dealing with disease in plants, and any person having diseased plants in his possession must deal with them as may be required by the rules. A person whose neighbour harbours diseased plants may call upon him to carry out the rules, and in default may report him to the Inspector of Plant Diseases (No. 35).

The other laws deal with finance or are of the nature of private or local Acts.

Three Ordinances were passed by the Legislative Board of the Turks-Caicos Islands. Two of these are financial; the third repeals a local law, which Jamaica laws render no longer necessary.

6. TRINIDAD AND TOBAGO.

[Contributed by WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—38.¹

Criminal Procedure (No. 3).—The Criminal Procedure Ordinance, 1911, repeals like Ordinance of 1909, and amends provisions of the Criminal Procedure Ordinance No. 13 by substituting sentences of imprisonment instead of sentences of death, which are thereby prohibited in the case of persons who, in the opinion of the Court, are under the age of sixteen years.

Apprenticeship (No. 5).—The Industrial Training Ordinance, 1910, enables the father or the mother, or, failing both parents, the person maintaining the boy, to bind such boy with the approval of the Board of Industrial Training for any term not exceeding five years to be an apprentice in various trades therein specified, and such contract shall operate as if the boy, being of full age, by deed of covenant had bound himself. The Governor is empowered to constitute a Board of Industrial Training, and the same is incorporated under the corporate name of "The Board of Industrial Training of Trinidad and Tobago," with the duties and powers specified in the Ordinance.

Civil Procedure (No. 9).—The Petty Civil Courts Ordinance, 1911, prescribes a procedure with modified jurisdiction for the existing Petty Civil Courts held in the various legal districts of the island. The Ordinance provides for the public sittings of the Courts as the Governor by proclamation may appoint. The Stipendiary Justices of the Peace in the

¹ Ordinances are made by the Governor with the advice and consent of the Legislative Council, and Public and Private Ordinances are numbered consecutively for the calendar year.

several districts are to be the Judges of the Courts in their respective districts, and the Courts are to have jurisdiction to try all actions (except as hereinafter excepted) in which the sum claimed is under £25. The actions excepted from the jurisdiction of the Courts are actions of replevin, and those relating to land and devises or limitations under will or settlements respectively, seduction, breach of promise, criminal conversation, libel or slander, slander of title, infringement of patent, merchandise mark or copyright, malicious prosecution or false imprisonment, breach of statutory duty, validity of acts done in performance of public duties or liability in relation thereto. But with consent of parties the Court in actions of trespass raising issues of title may give decision. The Court, subject to the £25 limit, has jurisdiction in judgment summonses. Infants are enabled to bring actions for wages, and above fourteen years of age are made liable for debts incurred for necessaries. Actions may be brought by or against trustees, executors, partners, married women, and infants by next friends or guardians.

Provisions are contained relating to parties to actions, joinder of causes, rules of procedure, appeals, pleading, appearance of parties, witnesses, oaths, costs, execution, attachment, arbitration, interpleader, limitation of actions, and unqualified persons acting as solicitors. The rules and Court forms of procedure are contained in the schedule.

The Ordinance repeals the Petty Civil Courts Ordinance No. 54, and the Amendment Ordinances Nos. 298 and 35, 1907.

Larceny (No. 10).—The Larceny (Summary Conviction) Ordinance, 1911, amends the Summary Convictions (Offences) Ordinance in relation to larcenies in dwelling-houses, and of sugar, rum, and other produce in boiling houses and from vessels in port.

Marriage (No. 11).—The Marriage Ordinance, 1911, enables the Governor in the case of one of the parties to an intended marriage not being within the Colony, and notwithstanding the provisions of the Marriage Ordinance No. 59, by licence under his hand to authorise the District Registrar to issue the necessary certificate enabling the marriage ceremony to be performed.

Highways (No. 14).—The Roads Ordinance, 1911, enables the District Officer of the Public Works Department to authorise the destruction of all swine straying on the public main and the local roads. The Director of Public Works is empowered to cut timber for the maintenance of the public roads.

Shop Assistants (No. 16).—The Shop Hours Ordinance, 1911, amends like Ordinance, 1910, and enables the Governor in Executive Council to vary the hours of work fixed by that Ordinance.

Railways (No. 17).—The Railways (Amendment) Ordinance, 1911, enables the Governor in Executive Council by by-law to limit the liability of the railway as regards carriage of goods to such an extent as to the Council may seem reasonable.

Adulteration (Milk) (No. 18).—The Food and Drugs Ordinance, 1911, amends like Ordinance No. 162 (Laws of Trinidad) by fixing the penalties for the adulteration of milk by added water at 10s. for every 1 per cent. of added water for a first offence, £1 for a second offence, and liability to imprisonment with hard labour for a third or subsequent offence.

Petroleum (No. 19).—The Petroleum (Pipe Lines) Ordinance, 1911, makes it illegal to lay down on any land of the Colony pipes for the conveyance of oil otherwise than in accordance with the provisions of this Ordinance, and subject to the rules, regulations, and penalties contained therein.

Territorial Forces (No. 20).—The Local Forces Ordinance, 1911, enables any member of the Territorial Forces of the United Kingdom to be attached to the local forces of the Colony, and any member of the latter forces to the former, for his annual training, subject to the provisions and conditions specified in the Ordinance. Army Reservists are liable for service only as soldiers of the Regular Forces, and when called upon for service are to be conveyed to the place of service at the cost of the Imperial Government.

Marriage (No. 23).—The Deceased Wife's Sister's Marriage Ordinance, 1911, declares every marriage, otherwise lawful, theretofore or thereafter contracted between a man and his deceased wife's sister—including sister of the half-blood—within the Colony or without, to be within the Colony valid and of full force, provided that if before the commencement of the Ordinance (July 17, 1911) any such marriage shall have been annulled by Court of Law, or either party thereto during the life of the other shall have contracted a lawful marriage, the original marriage so annulled or avoided by subsequent marriage shall be deemed to have become and to be void upon and from the day of such annulment or subsequent marriage. The Ordinance contains a reservation saving all rights, testamentary dispositions, etc., existing at commencement of Ordinance.

Oil Mining (No. 25).—The Oil Mining and Refining Ordinance, 1911, makes it illegal to erect oil refineries or carry on the industry of oil refining otherwise than in accordance with and subject to the provisions and conditions specified in the Ordinance, including the special right of pre-emption of all crude oil and products thereof vested in His Majesty's Government.

Dogs (No. 26).—The Dogs (Muzzling) Ordinance, 1911, enables the police to destroy dogs found in public places without muzzles, subject to the provisions in the Ordinance and any rules made by the Governor in Executive Council pursuant thereto.

Public Health (No. 28).—The Public Health (Special Powers) Amendment Ordinance, 1911, amends and is consolidated with like Ordinance No. 188 of the Laws of Trinidad, and the power thereby given to the Governor to order the restraint and isolation of persons suffering from

certain infectious diseases is by the Ordinance extended to include persons who have been exposed to infection and so likely to become infected.

Criminal Law (No. 29).—The Probation of Offenders Ordinance, 1911, enables Stipendiary and other Justices of the Peace in the exercise of the discretion vested in them by the Ordinance to dismiss the proved information or charge against an offender or release the offender on probation, upon recognisance with or without sureties for good behaviour and appearance when called upon for conviction and sentence, for such period, not exceeding three years, as shall be specified in the Order.

Quarantine (No. 31).—The Quarantine (Amendment) Ordinance, 1911, is consolidated with and amends like Ordinance, 1910, by making the Governor, instead of the Quarantine Authority, the proper authority to give the notifications and particulars required by the West Indian Intercolonial Sanitary Convention.

Public Trustee (No. 32).—The Wills and Probate Ordinance (Amendment) Ordinance, 1911, is consolidated with like Ordinance No. 99 of the Laws of Trinidad, and amends the same by enabling the Court to grant probate or letters of administration to the Public Trustee created by the Imperial Public Trustee Act, 1906, without such Trustee being required to give any security.

Industrial Schools (No. 34).—The Industrial Schools (Amendment) Ordinance, 1911, is consolidated with the principal Ordinance No. 30 of the Laws of Trinidad and like Ordinances 1906 and 1908, and enables the provisions of the principal Ordinance to be applied to the case of illegitimate children, and brings putative fathers, so adjudged by corroborative evidence, under liability to contributions for maintenance.

Excise and Customs Duties.—Ordinances Nos. 35 and 36 (1911) relate to raising funds for immigration and agriculture by taxes on the Colony's produce, and No. 37 (1911) is an amending Customs Duties Ordinance of the like Ordinance, 1909, with which it is consolidated.

Plant Protection (No. 38).—The Plant Protection Ordinance, 1911, enables the Governor by Proclamation to prohibit the importation of plants, etc., likely to introduce diseases or pests affecting trees, shrubs, or herbs, and to make regulations for the eradication of plant diseases, and appoint inspectors to carry them out.

7. THE WINDWARD ISLANDS.

(i) GRENADA.

[Contributed by SIR CHARLES J. TARRING, *late Chief Justice of Grenada.*]

Ordinances passed—23.

Statute Laws, Revised Edition (No. 10).—This Ordinance offers a good example to Legislatures which desire to reduce their legislation to

a Code, by providing for revision at a short interval. The statute law of Grenada was brought into the moderate compass of one folio volume of pages 983 + xvi in the year 1897. Since that date the Legislature of the Colony has not been inactive, as the pages of this Journal show; and it is by no means too early now to issue a new edition. The Ordinance enumerates the powers of the Commissioner appointed to prepare it, and prescribes its approval by the Secretary of State and its issue by proclamation in the Colony. Two other Ordinances (Nos. 13 and 14) for **repealing** certain Ordinances which have become effete or unnecessary, and **amending** others, promote the work of revision. (The new edition has already been published in 2 vols. 4to, containing altogether pages 1940 + xxvi + vii.)

Probate (No. 16).—This Ordinance regulates the practice and procedure of the Supreme Court in the exercise of its probate jurisdiction. It provides for the production of testamentary instruments, administration *pendente lite*, the right of the Court to exercise discretion in the appointment of administrators, the effect of renunciation of probate, and the making of rules and orders by the Chief Justice, their approval by the Governor-in-Council, and their publication.

Cinematographs (No. 9).—Exhibitions by means of cinematographs or other inflammable films are prohibited without permission of the Governor, which may be refused, or granted subject to rules and special conditions and restrictions, and may be revoked.

Moneylending (No. 20).—Any Court may reopen harsh and unconscionable transactions, whether proceedings are taken before it at the instance of the lender or of the borrower or of the surety or other person liable, even before the time for repayment of the loan or any instalment thereof has arrived. The Court may exercise the same powers in cases of proof in bankruptcy, and in all cases where the transaction, whatever its form, is substantially one of moneylending. The rights of any *bonâ fide* assignee or holder for value without notice are left unaffected. False and fraudulent representations or dishonest concealment of material facts to induce borrowing are made a misdemeanour.

St. David's Jetty Rates (No. 1).—Collection of rates and dues at Requin Harbour.

Amendment Ordinances were passed to amend the following Ordinances: viz. Customs, 1894 (No. 2); Carriacou District, 1904 (Nos. 3 and 21); Friendly Societies, 1897 (No. 4); Prisons, 1896 (No. 5); Convicts' Licence, 1883 (No. 6); Cocoa and Nutmegs, 1896-1909 (No. 7); Liquor Licence, 1910 (No. 8); Taxes Management, 1904-7 (No. 12), giving relief to owners of houses of small value; Birds and Fish Protection, 1891 (No. 15), adding certain names to those of birds absolutely protected by law, and repealing the Birds and Fish Protection Ordinance, 1908; Police, 1896 (No. 17); Public Health, 1911 (No. 18), as to keeping swine in towns; Oaths, 1897

(No. 19); Weights and Measures, 1887 (No. 22). Two **Appropriation Ordinances** (Nos. 11 and 23) were passed.

Two Proclamations, nine Orders-in-Council, and twenty-one Regulations were issued during the year.

(ii) ST. LUCIA.

[Contributed by SIR CHARLES J. TARRING, *late Chief Justice of Grenada.*]

Ordinances passed—25.

Crown Suits (No. 1).—Claims by the Government against private persons, and by private persons against the Government, are regulated by this Ordinance. The former are to be brought by the Attorney-General or other duly authorised officer, and, subject to special provisions as to costs, are to be carried on in every respect as suits between private parties.

The latter, being of the same nature as claims against the Crown in England under the Petitions of Right Act, 1860 (Imperial, 23 & 24 Vict. c. 34), may, with the consent of the Governor, be preferred in the Royal Court. A Petition, in the form scheduled, must be addressed to the Governor-in-Council setting forth the facts, verified by affidavit, relied on for relief, and the redress, relief, or remedy prayed for. If the claim appears to be *bonâ fide* and not otherwise capable of settlement, the Governor-in-Council shall grant his consent, and the petition endorsed with the Governor's fiat shall be returned to the petitioner to be filed in the Royal Court; a copy shall be left at the chambers of the Attorney-General with a written request, in the form scheduled, for an answer within twenty-eight days from service. The Petition shall then be entered in the Royal Court as a suit, entitled in the names of the petitioner as plaintiff and the Attorney-General as defendant. All subsequent proceedings, so far as not inconsistent with the Ordinance, down to and including hearing and trial, shall be conducted in the same manner as ordinary suits for a similar purpose between private parties, and all documents shall be served by delivery at the chambers of the Attorney-General. No execution shall issue against the Government on any judgment, decree, or order; but a copy of such proceeding under the seal of the Court shall be transmitted by the Registrar to the Governor, who shall by warrant direct the Treasurer to pay any money awarded, or take the necessary measure to carry into effect any other decree or order. Appeals are allowed as in actions between private parties; but if made by the Government, they are to act as a stay, on terms as to the Court seem fit, pending the result. Costs may be awarded as in suits between private parties, but without personal liability to the Attorney-General; costs given to the Government shall be recovered by the Attorney-General and paid into the Treasury. The Crown Suits (Costs) Ordinance, 1857, is repealed with the usual conditions.

Turtle and Fish Protection (No. 5).—This Ordinance enacts a close season for turtle (May 1 to August 31 inclusive), with power to the Governor to alter the dates of its commencement or termination or both. It also forbids setting turtle nets within 100 yards of the shore; catching turtle or taking turtle eggs on the shore; and killing, selling, or having in possession turtle less than 15 lb. in weight. The destruction of fish by gunpowder, dynamite or other explosive substance in the waters of the island or within one mile from the shores is prohibited. Offenders against the Ordinance may be arrested without warrant.

Weights and Measures (No. 6).—This Ordinance prescribes what shall be for the Colony the primary measure of length (yard), surface (square yard), weight (pound, avoirdupois), troy weight, capacity (gallon); specifies the use of troy and avoirdupois weights; provides for standards, the appointment of inspectors and their duties, the general requirements of weights and measures and weighing-machines; and preserves the civil remedies persons aggrieved by any offence against the Ordinance may be entitled to. The Weights and Measures Ordinance, 1851, and s. 14 of the Towns and Villages Ordinance, 1887, are repealed.

Village of Dennery Loan (Waterworks) (Nos. 9 and 14).—These Ordinances provide the money for a water supply to Dennery and arrange its repayment.

Customs and Excise Duties (Resolution) (No. 12).—This Ordinance gives immediate effect to any such Resolution.

Surveyor and Boundaries Settlement (No. 15).—This is an important Ordinance consolidating and amending the law on the subject. It enacts the qualifications for being licensed as a land surveyor; sets out the conditions and methods of making surveys of land; provides for indexes of plans, etc., and searches of same, suspension or cancellation of licences and revocation thereof, penalties and fees; and prescribes the procedure for the settlement of boundaries and for ascertaining encroachments upon Crown lands. It repeals the Surveyors' and Boundaries Settlement Ordinance, 1886 (No. 83), and its Amendment Ordinances, 1890 and 1896 (Nos. 2 of 1891 and 17 of 1896) with the usual conditions.

Emigrants' Protection (No. 16).—This Ordinance prohibits persons from proceeding without a permit from the Colony to any place notified by the Governor as prescribed. It lays down the conditions under which permits may be granted; provides for the registration of recruiting agents; sets up a Distressed Emigrants' Fund; creates offences in connection with the engagement of labourers; and imposes penalties on shipping agents and masters of ships booking or receiving or having on board passengers for a notified place not furnished with permits. Masters of ships must hand lists of passengers on demand to the police, who are empowered to search ships bound directly or indirectly for notified places in which passengers for such places are suspected to be, and to remove them if without permits. The

Emigrants' Protection Ordinance, 1889, and the Amendment Ordinance (No. 3 of 1890) are repealed.

Moneylending (No. 17).—This Ordinance is in similar terms, *mutatis mutandis*, as the Grenada Ordinance No. 20 of this year (see *ante*, p. 457).

Flogging and Whipping (No. 18).—No sentence of flogging may be passed upon a person under sixteen years of age, or upon a female of any age. Males under sixteen may be sentenced to whipping; females to solitary confinement or such additional punishment as may be inflicted on a female for an offence against discipline. The instruments by which flogging and whipping may be inflicted are described, the former not to be oftener than twice at not less than fourteen days interval, the latter only once; and neither to be with more than twelve strokes. The Regulation of Corporal Punishment Ordinance, 1900, sub-s. 3 of s. 73, and s. 75 of the Criminal Code, are repealed.

Castries Waterworks Loan (No. 24).—This Ordinance provides for a loan from the public funds of the Colony to the Castries Water Authority towards the cost of extending and improving the Castries Waterworks.

Amendment Ordinances were passed to amend the following Ordinances: viz. Coasting Steamers, 1893 (No. 2); Legal Practitioners, 1888 (No. 3); Castries, 1888 (No. 7); Towns and Villages, 1887 (No. 10); Savings Bank, 1903 (No. 11); Promissory Oaths, 1879 (No. 19); Cemeteries, 1882 (No. 20); Customs, 1888 (No. 21); Tax, 1875 (No. 25).

Abercrombie Masonic Lodge Trustees (No. 4).—This Ordinance vests in trustees a lot of land with the building thereon situate at the corner of St. Louis and Laborie Streets in Castries for the benefit of the Lodge, with power to sell or lease on written request of members, and other ordinary powers and duties. A privileged claim and charge on the property in favour of one J. S. H. Branch is saved.

Two **Appropriation Ordinances** (Nos. 8 and 13) were passed.

(iii) ST. VINCENT.

[Contributed by WALLWYN P. B. SHEPHEARD, ESQ.]

Cotton Disease (No. 3).—The Cotton Diseases Prevention Ordinance, 1911, empowers the officer appointed by the Governor to carry into effect the provisions of this Ordinance to enter lands and destroy by fire at the end of the cotton season all cotton plants, and recover the cost from the occupiers who had failed to do so pursuant to the requirements of the Ordinance.

¹ Ordinances are passed by the Governor with the advice and consent of the Legislative Council of St. Vincent.

Statute Law Revision (No. 4).—The Statute Law Revision Ordinance, 1911, repeals the enactments set out in the schedule to the Ordinance with certain savings and conditions specified in the Ordinance.

Quarantine (No. 6).—The Quarantine Ordinance, 1911, gives effect to and affirms the Quarantine Convention of 1904 as modified by the Central Quarantine Authority in 1907 and 1908 and in the schedules sets forth the West Indian Inter-Colonial Sanitary Convention of 1904 as amended in 1907 and 1908 and the Quarantine Regulations pursuant thereto.

Cinematograph Exhibitions (No. 10).—The Cinematograph Ordinance, 1911, places under the control of the Governor all public exhibitions of cinematograph pictures, all exhibitors being required to obtain the Governor's written permission and comply under the supervision of the police with the conditions on which the licence was issued.

Veterinary Surgeons (No. 11).—The Veterinary Surgeons Ordinance, 1911, requires all persons practising veterinary surgery to be registered pursuant to the provisions of this Ordinance, and persons practising without such registration are liable to fines and imprisonment. The persons qualified for registration are

- (1) veterinary surgeons qualified by the law of the United Kingdom ;
or
- (2) holding certificates granted in a British possession or foreign country recognised by the Medical Board as a guarantee of sufficient knowledge and skill ; or
- (3) employed by the Government as Government Veterinary Surgeon.

Excise Duty (No. 15).—The Excise Ordinance, 1911, consolidates and amends the law relating to the distillation and disposal of spirits.

Bills of Sale (No. 19).—The Bills of Sale Ordinance, 1911, applies to every bill of sale whereby the holder or grantee has power to take possession of the personal chattels comprised in the bill of sale.

The Ordinance in its definition of "bill of sale" as the subject of its provisions for registration, etc., excludes deeds whereby any live stock or dead stock or other chattels are conveyed or mortgaged together with any plantation or lands, assignments for the benefit of creditors, marriage settlements, transfers of any ship or share of a ship, transfers of goods in the ordinary course of business, bills of sale of goods not in the Colony, bills of lading, India warrants, warehouse certificates, warrants for delivery of goods, or other documents used in the ordinary course of business controlling the disposition or delivery of goods. Every bill of sale to which the Ordinance applies must be duly attested and registered within seven days after execution thereof, or, if executed out of the Colony, within seven days after the time at which in the ordinary course of the post it would arrive in the Colony if posted immediately after the execution thereof, and must set forth the consideration for which it was given, otherwise such bill of sale shall be void in respect of the personal chattels comprised therein. The Ordinance

controls the power of seizure under a mortgage bill of sale, and enacts the form thereof. It also sets forth the precise manner of execution, attestation, and registration of bills of sale within the Ordinance.

Judicature and Administration of Justice.—The Magistrates Ordinance, 1911 (No. 20); The Indictable Offences (Magistrates' Procedure) Ordinance, 1911 (No. 21); The Summary Conviction Offences (Procedure) Ordinance, 1911 (No. 22); The Small Debts Ordinance, 1911 (No. 23); The Magistrates Decisions (Appeals) Ordinance, 1911 (No. 24); The Summary Conviction Offences Ordinance, 1911 (No. 25); The Indictable Offences Ordinance, 1911 (No. 26). These seven Ordinances are a complete consolidation of the law of the Colony in respect of the civil and criminal jurisdiction and procedure in respect of the subject-matter indicated by the titles of the several Ordinances.

8. THE LEEWARD ISLANDS.

[Contributed by SIR CHARLES J. TARRING, *late Chief Justice of Grenada.*]

THE FEDERAL COLONY.

Acts passed—12.

Oaths (No. 3).—This Act enacts the form and manner of administration of any oath, the validity of which is not to be affected by the absence of religious belief, and permits affirmation instead of an oath, providing forms.

Supreme Court Consolidation (Nos. 8, 11).—These Acts enact the constitution and judges of the Court, both in its ordinary and its appeal jurisdiction; the grounds and procedure of criminal appeal; and provide for circuits and sittings, venue, powers and jurisdiction of officers and registrars, witnesses' expenses and subpoena, enrolment and rights of practitioners, seals, places of sitting, punishment of contempt of Court, and applications in the absence of the judge. Pending causes are protected. Thirteen Acts dating from 1880 to 1910 are repealed.

Amendment Acts were passed to the following Acts: Offences against the Person, No. 20 of 1873 (No. 4); Quarantine (Convention), 1905 (No. 5); Jury Laws Consolidation, 1878 (No. 10), providing for separation of juries in cases of felony and misdemeanour, form of oath to be taken on separation, refusal to take oath, exempted persons, count and oath of jury in box, and power to summon; s. 46 of the principal Act is repealed. The Magistrates' Code of Procedure Act, No. 7 of this year, is repealed (No. 12).

Two **Appropriation** Acts were passed (Nos. 1 and 2).

(i) ANTIGUA.

Ordinances passed—3.

Two (Nos. 1 and 2) are **Appropriation** Ordinances.

Lepers.—No. 3 gives power to the General Legislature to provide for the care and maintenance of indigent lepers and the prevention of the spread of leprosy.

(ii) DOMINICA.

Ordinances passed—7.

Lepers (No. 4).—Empowering the General Legislature as in Antigua (No. 3 of this year).

Law Library (No. 7).—Providing for the establishment and management of a Law Library.

Amendment Ordinances were passed to the following Ordinances, viz. Telegraph, Telephone, and Electric Lighting, 1905 (No. 1); Dominica Forests Limited Concessions, 1910 (No. 5).

Appropriation (Nos. 2 and 3).

(iii) MONTSERRAT.

Ordinances passed—6.

Lepers (No. 5).—Empowering the General Legislature as in Antigua.

Constitution Amendment (No. 2).—Providing for the appointment and enacting the quorum of a Legislative Council.

Savings Bank (No. 3).—Amending Ordinance No. 7 of 1901 by limiting deposits and interest.

Appropriation (Nos. 1 and 6).

(iv) ST. CHRISTOPHER AND NEVIS.

Ordinances passed—11.

Law Library (No. 1).—Providing for the establishment, management, and control of the St. Kitts-Nevis Law Library at Basseterre in St. Christopher.

Emigration (No. 2).—Providing for the licensing of agents for the collection of emigrants and their removal from the Colony.

Public Library (No. 6).—Establishing the Nevis Public Library at Charlestown in St. Nevis, and providing for its management.

Town and Village Regulation (No. 10).—For promoting order and general convenience and comfort in the Presidency.

Lepers (No. 11).—Empowering the General Legislature as in Antigua (No. 3 of this year).

Savings Bank (No. 3).—Amending Ordinance No. 2 of 1909 by providing

for the payment out of the surplus funds of the bank of officers of the Treasury for duties performed therefor.

Acquisition of Land by the St. Kitts (Basseterre) Sugar Factory, Ltd. (No. 4). Private Bill to facilitate the operation.

Defence Force (No. 7).—Amending Defence Force Ordinance, 1903.

Appropriation (Nos. 5 and 9).

(v) VIRGIN ISLANDS.

Ordinances passed—3.

Lepers (No. 3).—Empowering the General Legislature as in Antigua.

Appropriation (Nos. 1 and 2).

XI. MEDITERRANEAN COLONIES.

1. GIBRALTAR.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

Ordinances passed—5.

Administration.—The Public Trustee of the United Kingdom is not required to give a bond or security on a grant of administration in Gibraltar (No. 4).

The other Ordinances contain small amendments which do not call for special notice.

2. MALTA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

Ordinances passed—15.

Criminal Law.—A considerable number of amendments of the Criminal Code are made by No. 9.

A general provision is made in the case of crimes punishable with imprisonment for more than twelve months (except "involuntary homicide") that the Court may award hard labour.

In Malta adultery is a criminal offence, necessarily with some limitations. The existing provisions have been recast to the following effect:

- (a) A wife convicted of adultery and the adulterer are punishable with one year's imprisonment.
- (b) A husband who keeps a concubine in the conjugal house or elsewhere in a notorious manner is liable to one year's imprisonment: the concubine to nine months'.
- (c) No prosecution lies in respect of the foregoing offences except on

the complaint of the husband or wife, nor in any case where the parties are judicially separated : nor where there has been express or tacit condonation : nor where the complaining husband has kept a concubine in the conjugal house, etc. : nor where it is proved that the complaining wife has committed adultery within the preceding five years : nor where the complaining husband has deserted the wife for a year or instigated her prostitution.

Provision is made by No. 10 for a new issue of the Criminal and Police Laws, with all subsequent amendments inserted in their proper places.

Spirits.—A comprehensive Law of 103 sections deals with the distillation and sale by wholesale and retail of spirits (No. 11). The Ordinance does not call for any special remark. The repealing section is in the vague form which gives little trouble to the draftsman and much trouble to every one else : “ Any law or regulation repugnant to or inconsistent with such section or provision shall, to the extent of such repugnancy or inconsistency, be repealed.”

Artificial Wine.—Ordinance No. 12 defines artificial wine as “ wine made otherwise than with the juice of fresh grapes grown in these islands, or containing an addition of substances which alters the limits of composition of natural wine or the relation between the components of natural wine.” A licence is required for the manufacture of artificial wine, and a duty is leviable on it corresponding to the import duty on natural wine.

The other Ordinances are either financial or deal with private matters.

3. CYPRUS.

[*Contributed by* EDWARD MANSON, ESQ.]

Ordinances passed—15.

Bankruptcy (No. 14).—The most noteworthy Ordinance of the year is that dealing with culpable bankruptcy. Any person convicted of culpable bankruptcy under the provisions of the Ottoman Commercial Code is made liable to imprisonment for two years with or without hard labour. The Ordinance further specifies a number of bankruptcy offences (corresponding closely to the offences enumerated in s. 11 of our own Debtors Act, 1869), such as failing to discover or deliver up property, falsification of books, obtaining credit by false pretences, etc. For these the debtor is liable to seven years' imprisonment with or without hard labour.

Wild Birds Protection (No. 15).—A licence is required to shoot game. Close seasons are prescribed for game and wild birds, and power is given the High Commissioner in Council to reserve areas and forests.

The rest of the legislation consists of amending Ordinances—dealing with such miscellaneous subjects as pharmacy, knives, municipal councils, wills and succession, and the death penalty for children.

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NOTES.

Comparative Law in Blue-Books.

Combines.—It is an interesting illustration of the want of co-ordination between Government Departments that a *Report of anti-Trust Legislation in the British Self-governing Dominions* ([Cd. 6439] Wyman & Sons, 3d.) should be prepared by the Commercial Department of the Board of Trade instead of by the Colonial Office. The report consists of the text of the statutes, with a useful prefatory note, but without any attempt to denote the underlying principles or to survey the developments through judicial decisions. A noticeable feature of the Canadian statute is the reliance which it places upon the force of public opinion. New Zealand legislation has been directed specifically against the operations of certain American trusts, and is confined to certain articles. The position in Australia is somewhat chaotic, and has features in common with the situation in the United States. From the prefatory note may be quoted the epitome of the Acts printed in the report:

As regards the Dominion of Canada, the Combines Investigation Act, 1910, provides for the appointment of Boards to investigate "Combines, Monopolies, Trusts, and Mergers." Six or more persons, British subjects resident in Canada and of full age, who are of opinion that a "combine" exists and that prices have been enhanced or competition restricted by reason of such combine to the detriment of consumers or producers, may make to a judge an application for an Order directing an investigation. Applicants must furnish, among other particulars, statutory declarations to the effect that the alleged combine operates to the detriment of the declarants as consumers or producers, that such combine is injurious to a trade or has operated to the detriment of consumers and producers, and that the investigation is in the public interest. If there appears to the judge to be a *prima facie* case, he shall transmit to the Registrar (appointed under the Act) an Order directing an investigation. A Board of three members is to be appointed by the Minister of Labour; one member being appointed on the recommendation of the applicants, one on the recommendation of the persons named in the Order as being concerned in the alleged combine, and the third, who is to be the chairman of the Board, on the recommendation of the two members thus selected. The Board so constituted shall have the power of a Court of Law for the purpose of summoning witnesses, etc., and, after inquiry into the matter submitted to it, may make any recommendations it sees fit. When it appears from such an investigation or from the judgment of a Court that a combine exists with consequent detriment to consumers, the Governor in Council may order the admission free of duty, or at a reduced rate of duty, of any article in order to give the public the benefit of reason-

able competition; any patent rights which have been similarly abused may be revoked by a judgment of the Exchequer Court of Canada; and any person found guilty of restricting the production or supply of any article, enhancing its price or lessening competition in regard thereto, and continuing to do so, is liable to pecuniary penalties.

The New Brunswick Act (No. 5 of 1910) provides for the establishment of a Board of Public Utility Commissioners. The term "Public Utility" means and includes any body which controls "any plant or equipment for the conveyance of telephone messages or for the production, transmission, delivery, or furnishing of heat, light, water, or power . . . to the public," or which controls any street railway. Public Utilities are required to furnish "reasonably adequate services and facilities," and the charge made therefor must be "reasonable and just." Such charges, which must be in no way discriminatory, are to be shown in a schedule to be filed with the Board and to be open to public inspection, and they may not (ordinarily) be altered without thirty days' notice to the Board. No Public Utility may charge one person a greater or less compensation for service rendered than it charges any other person, and, conversely, no person may knowingly accept from a Public Utility any such rebate or discrimination. Complaints are to be investigated by the Board, which is furnished with the powers of a Court of Law for this purpose, but there is an appeal from its decision to the Lieutenant-Governor in Council.

The Australian Industries Preservation Act, 1906-1910, Part II., prohibits any "person" from making a contract or engaging in a combination in relation to trade or commerce with other countries or among the States of the Commonwealth, if such action be in restraint of trade, or tend, by means of unfair competition, to the destruction or injury of any Australian industry, the preservation of which is advantageous to the Commonwealth. The fact that the defendant is a commercial trust is to be deemed *prima facie* evidence of "unfair" competition. It is, however, open to the defendant to prove that the action complained of is in fact not detrimental to the public or not unreasonable. The Act also prohibits, in relation to trade or commerce with other countries or with the States, monopolies or attempted monopolies, as well as the giving or offering of any rebate or refund to another person for exclusive dealing. In the latter case the defendant may, however, plead that such action was not detrimental to the public, unfair in the circumstances, or injurious to Australian industry. Conversely, the refusal to sell to any person, on the ground that he will not consent to exclusive dealing, is illegal. The aiding and abetting an offence under the Act is itself an offence. In prosecutions under the Act the averments (if sufficiently supported) of the prosecutor shall be deemed to be proved in the absence of proof to the contrary. No proceedings for an indictable offence or for the recovery of penalties may be taken except by, or on behalf of, the Attorney-General, and no other proceedings under the Act may be instituted without his consent. Any person who is concerned in a proceeding outside Australia, which if committed in Australia would be an offence under the Act, is himself guilty of an offence.

With respect to this Act, however, it may be pointed out that, in view of certain decisions of the High Court of the Commonwealth of Australia, the precise application of its provisions is a matter of some doubt.

In New Zealand the Commercial Trusts Act, 1910, relates solely to transactions regarding goods enumerated in the schedule to the Act. It prohibits concessions in the way of rebates, etc., by one person to another on condition of the latter dealing exclusively or not dealing at all with a person or a class of persons, or on

condition of his being or becoming a member of a commercial trust or acting in conformity with the directions of a trust. It also makes penal the refusal to deal with any person on the ground of that person declining so to regulate his trade relations. Any person conspiring to create a complete or partial monopoly, if such monopoly be contrary to the public interest, is guilty of an offence. The Act also prohibits the supply of goods at an unreasonably high price (*i.e.* a price which gives the seller "more than a fair and reasonable rate of commercial profit"), when the price is controlled by a commercial trust of which the seller or his principal is or has been a member or in obedience to which he acts. Every (present) member of a trust which offends against this Act is himself guilty of an offence, and the wilful abetting of an act which would in New Zealand constitute an offence under the Act, even if performed outside that country, is of itself also an offence.

As regards the Union of South Africa, the Post Office Administration and Shipping Combines Discouragement Act, 1911, prohibits the Governor-General from entering into any ocean mail contract with any person connected with any shipping or other combination deemed to be detrimental to the industries of the Union. He may differentiate against such persons in regard to dock, wharfage, or trans-shipping dues or railway freight rates.

The Cape of Good Hope Act (No. 15 of 1907)—an "Act to prevent a monopoly in the Meat Trade"—requires that a butcher's licence be issued only in respect of particular premises, which must be specified in the licence. Further, "every act, contract, combination, or conspiracy in unreasonable restraint of the trade of a butcher" is declared illegal—as well as any contract or undertaking in support of a combination whose object is to secure control of the sale of meat for the arbitrary regulation of prices. Intimidation for the purpose of forcing a butcher to modify in any way the price at which he ordinarily sells is made a penal offence. It is provided, however, that the Act may or may not become operative in the several divisions or districts of the Colony at the option of the local authorities.

Divorce.—The volume of appendices to the report of the Royal Commission on Divorce and Matrimonial Causes ([Cd. 6482] Wyman & Sons, 1s. 10d.) contains several items useful from the point of view of the student of comparative legislation. There is a translation of the Norwegian divorce law with some explanation of its provisions. Mr. J. Arthur Barratt collected for the Commission the opinions of a number of American jurists upon the laws of the various States, which, with a summary of the statutes relating to insanity, are printed in an appendix. The Foreign Office obtained a number of returns as to the publication of divorce proceedings in foreign countries which contains support to the general desire for some further regulation in this respect. There is also a translation of the Portuguese divorce law, and a note on adultery as an offence under the Indian Penal Code, supplied by the India Office.

"Options" and "Futures."—From time to time reports have been presented to Parliament containing particulars of the laws of foreign countries relating to gambling in "options" and "futures." Request was made in the House of Commons for this information to be brought up to date and supplemented by information about Canadian legislation. The reports have been collected and published by the Board of Trade ([Cd. 6441]

Wyman & Sons, 2½*d.*). From the introduction may be extracted the following summary of the existing legislation :

Ss. 231 and 987 of the revised Canadian Criminal Code contain the only Dominion legislation bearing upon the form of gambling in question. They declare guilty of an indictable offence, punishable with fine and imprisonment, any person who, with a view to obtaining profit or gain by the rise or fall in price, deals in stocks, goods, wares, or merchandise without the *bona-fide* intention of acquiring or selling them, or in respect of which no delivery is made or received ; and every office or place where such transactions are carried on becomes a common gaming house. There have not been, however, any prosecutions under these sections. There is no provincial legislation bearing on this matter.

In Italy and Servia "option" and "future" contracts are permissible.

There is no federal legislation in the United States on the form of gambling in question. The States of Tennessee, Kansas, and Washington have, however, passed laws prohibiting "bucket shops" and "bucket-shop transactions." An Act of the State of Wisconsin directly prohibits dealings in any goods or stocks on a margin to cover future fluctuations in price, but transactions of this nature are expressly protected in the State of Maryland.

"Gambling on 'change'" is forbidden by Article 80 of the Argentine Commercial Code, and the regulations of the Stock Exchange, drawn up under Government approval, also prohibit all operations included under that term.

There is in Austria a law of January 1903, concerning the organisation of exchanges, which prohibits dealings in "futures" in cereals and mill products, and imposes penalties on persons who habitually conduct such transactions or who wilfully influence the price quotations of cereals and mill products by bogus sales. In Hungary there is no legislation of this character.

In Egypt, by a law of 1909, exchanges are regulated by the State, and transactions in "futures" are declared valid, even where their object is merely the payment of differences. They must, however, to possess validity, have been carried out on an authorised exchange, and in accordance with its regulations.

The French Finance Laws of 1911 and 1912 confine the actual carrying out of dealings (whether "spot" or "future") in produce or merchandise to brokers, commission agents, and persons who make it their regular business to act as intermediaries in transactions of this nature. All persons not professionally so engaged must make use of the agency of persons who are so engaged. Such brokers, etc., are bound to keep a register of all their dealings in merchandise or produce, and they must send to their clients an extract from this register within twenty-four hours of the completion of the bargain. A tax is leviable on each transaction, and the register as well as back files thereof (*filieres*) must be shown on demand to the officers of the Administration.

In Germany the Bourse Law of 1896, which prohibited "time bargains" (Börsenterminhandel) in agricultural produce, has been superseded by a Law of 1908. It is stated that time bargains in any kind of produce other than corn, corn-milling produce, and combed wool, which are concluded under certain specified conditions partly identical with those applicable to similar transactions in stocks and shares, have the same legal validity as time bargains in stocks and shares ; and a plea that a transaction had for its object merely the payment of differences is not held to invalidate it. The Imperial Federal Council may, however, at any time suspend any or all time bargains.

With regard to time bargains in corn and corn-milling products, it appears that (a) these transactions are, as such, subject to special provisions determined by the

Imperial Federal Council, and (*b*) both contracting parties in such transactions must be either themselves the producers or manufacturers of goods of the kind dealt in, or they must be merchants or registered companies regularly engaged in "buying and selling or advancing money upon corn or corn-milling produce." The wilful conclusion of transactions of this nature on an exchange in accordance with the conditions applicable to other time bargains is now made a penal offence.

In Greece the purchase or sale of any article never actually possessed by either buyer or seller has been held by the Courts to come under the provisions of the Roman Law still in force against gambling; and rules to check dealings in "futures" have been drawn up by the Bourse authorities at the instigation of the Government.

In Japan, by virtue of a Departmental Instruction of May 21, 1911, "spot" transactions on margin and by bidding are, among others, prohibited on stock and other exchanges, such transactions having degenerated into mere gambling operations. It is stated that only certain classes of "spot" transactions are permissible, and that the objects in respect of which they take place are required to change hands immediately.

As regards the Netherlands, certain important modifications were, by the Law of May 20, 1911, introduced into the Dutch criminal legislation respecting games and wagers. "Gambling in futures," however, will not be affected thereby, save by way of exception, and only in so far as the exchanges on which it occurs have for their object speculation in which the possibility of gain depends on chance. Special legislation, it is understood, will be necessary to deal with gambling on the exchange.

In Norway it is forbidden by the criminal law, which came into force on January 1, 1904, to make a livelihood by a game of chance not permitted by a Special Law, or to incite thereto. All games for money or for the worth of money, in which, owing to the nature of the game or the largeness of the stakes, a cupidity of purpose is the predominating factor, are regarded as games of chance; and bets and speculations on difference of price at a future date, in which the same is the case, are also regarded as games for money.

Gambling on the Stock Exchange is prohibited in Roumania by the Law of May 9, 1904.

Time bargains relating to merchandise are not common in Spain, but they are permitted by the Civil Code, which recognises the validity of a contract in the form in which it is negotiated by the contracting parties. But if the contract should constitute a gamble in the true sense of the word, it is not enforceable in the courts.

Finally, in Switzerland the Federal Code declares that no action at law can be based on such time bargains in goods or stocks as partake of the nature of gambling or betting; and the Federal Court has interpreted this as meaning time bargains made between persons who have no intention of actually buying or selling the goods in question, but contemplate the fulfilment of the contract by the simple payment of a difference. No special measures have been taken in respect of gambling in "futures" in food-stuffs. The cantonal regulations in force in Bâle Ville make punishable with fine or imprisonment all "gambling in option and future contracts with impecunious or insolvent persons."

Police Traps in East Africa.—We are familiar in England with what is known as the "police trap" for motorists, but in British East Africa the art of trapping has been carried to much greater perfection by the native policeman, whose zeal in this matter somewhat outruns discretion. Two illustra-

tions are afforded by Mr. R. W. Hamilton's latest volume of Law Reports. In the first of these (*R. v. Mangalprasad*) an assistant sub-inspector of police at Nairobi, one Nawab Khan, who was investigating the loss of a 50-rupee note alleged to have been stolen by the above Mangalprasad and two others, received information that an attempt was about to be made to bribe him, and laid a trap accordingly. He got a confederate to assure the accused that the police inspector was open to a bribe, and, accordingly, the three accused persons presented themselves one night at the inspector's house and tendered him 150 rupees, which he took and immediately paid over to the authorities, with the result that the delinquents were sentenced by the magistrate to three months' rigorous imprisonment. On appeal to the High Court, the judges were not satisfied on the evidence that the intermediary was employed by the inspector to encourage the accused to offer a bribe. Had he been an *agent provocateur*, such trapping would have been open to the severest censure, but as there was already when he intervened an intention on the part of the accused to commit the offence of offering a bribe, the Court allowed the sentence to stand. In the other case (*R. v. Katemi*) the trap was laid with a view to stop the practice of buying slaves. A police sergeant having received information that a number of Giriama had left the coast—ostensibly to buy goats, but really to buy slaves in the interior—conceived the idea of laying a trap by sending a messenger to say he had slaves for sale. Two women were accordingly produced, and the accused bought the younger one for 50 rupees, and for doing so was sentenced by the magistrate to six months' rigorous imprisonment; but on appeal this conviction was quashed, Barth J. pointing out that the commission of the offence was procured by the police and their agents and that they were liable to be punished as abettors; and he took the opportunity of adding that the law looks with disfavour on anything in the nature of an *agent provocateur* or "police trap." The object of a police force is the prevention and detection of crime, not the manufacturing of it, even with a laudable motive behind. It is just as well to impress this strongly on the Oriental mind, which is more prone than the Western to resort to such methods. "The Tempter" marks the very worst trait of a certain personage of bad repute well known in the history of the human race.

The Legal Profession in Austria.—On this subject Dr. Emil Forbes sends us the following note :

"The Austrian Government has introduced a new Bill in the House of Deputies for the purpose of regulating the Austrian Bar, which will probably be passed by the autumn. Until 1867 the only way of entering the profession as a barrister for a person having the necessary academic qualification, was by nomination of the Minister of Justice. The Bar was limited to a certain number, which system was known as *numerus clausus*. This was changed in 1867 by the law, which is still in force, and which repealed the *numerus clausus* system and opened the Bar to all who could show the qualifications laid

down in the statute ; but owing to the fear of overcrowding in the profession the following stricter conditions were imposed :

- " (1) Austrian citizenship.
- " (2) A course in the Faculty of Laws at the Universities.
- " (3) Three legal examinations by the State.
- " (4) A degree of Doctor of Laws of an Austrian University.
- " (5) One year's practice at an Austrian Tribunal.
- " (6) Six years' training in a barrister's office.
- " (7) The final examination for the Bar.

" According to the law in force to-day retired judges who have been tribunal judges for at least five years can be admitted to the Bar without the above-mentioned qualification, though the necessary qualifications for a judge are not as strict as those for the Bar, and judges are not necessarily members of the Bar.

" This system was open to abuses, and has been very unpopular with the Bar.

" The new Bill retains—speaking generally—the old qualifications, and adds further restrictions. It proposes, for instance, that the Bar Council should have the right of refusing admission even to qualified persons if—

" (a) they have committed an untrustworthy act ('wer sich durch seine Handlungen des vertrauens unwürdig macht') ;

" (b) they are bankrupt, or in such bad financial circumstances as would constitute a temptation to unprofessional conduct ('wer sich in Konkurs oder in derart zerrütteten vermögensverhältnissen befindet, dass von ihm eine verlässliche Geschäftsführung nicht zu erwarten ist').

" Retired judges according to the new Bill will no longer be able to enter the Bar in the way they have hitherto done.

" The present system requires a candidate to have been trained for six years in a barrister's office (beside one in a tribunal). Two of these six years may, under the Bill, be spent in a Government office.

" The privileges of the members of the Bar are enlarged according to the requisitions and wishes expressed by the Bar Councils. Rules relating to professional discipline are now incorporated in the ordinary regulations for the Bar. Barristers are to be admitted as judges in the Highest Court of Justice (Oberster-Gerichtshof) dealing with cases of professional discipline."

The Wisdom of the "White Book."—We are so accustomed to hear our system of procedure criticised that we are apt to forget that abroad it is often, especially of late, held up as a model to be copied. The latest praise comes from Egypt. Our distinguished contributor, Mr. Sheldon Amos, formerly judge of the Native Court of Appeal and now Director of the Khedivial School of Law, invites his Egyptian colleagues to look for instruction from English practice. He compares the few sittings in a week, and the shortness of each sitting in Egyptian courts, with the six hours' daily sittings in London.

He quotes from the "White Book" the rules as to the "warned list." In fact, the whole of Mr. Amos's interesting pamphlet is an argument for the adoption of practices with which we are familiar. It sounds strange to find that the East is calling for the "White Book" and the "Yearly Practice."

The Legal Test of Insanity.—In a recent number of the valuable *Journal of the American Institute of Criminal Law and Criminology* is an interesting report by a committee composed of lawyers and physicians and presided over by Mr. Edwin Keedy, as to insanity and criminal responsibility. The committee went so far as to draft a statute embodying their suggestions. They do not use the word "insane," which has acquired, they think, a misleading connotation; they speak of "mentally diseased"; no one is to be punishable for what he did or omitted to do "when at the time of the act or omission alleged against him, he did not have, by reason of such mental disease or derangement, the particular state of mind which must accompany such act or omission in order to constitute the crime charged." The Bill does not define "the particular state of mind." It is left uncertain whether for murder, burglary, and arson different states of mind are required to constitute responsibility.

Codes of Commercial Law.—We have received the third volume of an elaborate work, *Codegos de Comercio Españoles y Extranjeros*, dealing with the history, theory, and practice of commercial law. The latest volume treats of mercantile books, and contains matter of great general interest, to be found nowhere else, so far as we know, relative to mercantile books, especially as to their value as evidence, the obligation to keep them, and kindred matters. It also gives a brief account of the law on these subjects in all the chief centres of the world. The authors have done their work with care. One reflection not wholly satisfactory to the English reader will occur to him: the development of modern commercial law is influenced less and less by English decisions and more and more by the Codes of France and Germany.

Boundaries of Territorial Waters.—We have received a copy of the Report of the Royal Commission appointed by a decree of the King of Norway to inquire into the boundaries of territorial waters in Finnmarken. The Commission, composed of M. Wollebaek, Captain Dahl, and Mr. Fleischer, has made an exhaustive study of the subject. We have in mind not merely the papers in the Proceedings of the Institut de Droit International and the Association for the Reform and Codification of the Law of Nations, but also Mr. Fulton's recent book upon the sovereignty of the sea, in saying that the question has never been examined with more care than in this Report. The subject is of special consequence to Norway, not only on account of the fisheries along her deeply indented coast, but also of the multitude of islands, wholly or partly submerged, in certain states of the tides. The authors of the report examine not merely the Norwegian laws, but also the English authorities. The chief conclusion arrived at is (p. 96): "Quelles que soient les règles générales du droit international en cette matière où—en supposant que

de telles règles fassent défaut—quelle que soit la pratique internationale la plus généralement observé à cet égard, la Norvège peut en tout cas invoquer un usage datant d'un temps immémorial, lorsqu'elle fixe l'étendue de son territoire maritime à une lieue (4 milles) à partir des îles et flots les plus avancés, et considère les fjords comme faisant entièrement parties de son territoire maritime."

A New History of English Law.—A few years ago the student of English law could have been referred with confidence to no history of English law. Reeves's volumes, excellent in their time, have long become wholly antiquated, and while France had at least two good legal histories and Germany several, England had none. This has been changed. Not to speak of the work of Professor Maitland and Sir F. Pollock, Dr. Carter's *English Legal Institutions* was followed by Dr. Holdsworth's *History of English Law*, and now Mr. Jenks publishes *A Short History of English Law*, an attempt "to cover the whole field of English law from the earliest times to the present day"; an attempt, let us add, carried out with skill, full knowledge, and a sense of proportion. At present we say no more of the volume than that it is not merely a storehouse of information; it is written with a certain charm of manner. One explanation of the charm is that the writer does not conceal his opinions, which are often very precise. For example, there is a short review of judicial decisions as to trade unions which winds up with the dictum: "The decision of the Lords in the Taff Vale case was pure legislation, and it threatened to ruin trade unionism by making huge drafts upon its funds. The House of Lords had first invented a new civil offence (civil conspiracy) and had then created a new kind of defendant against whom it could be alleged."

The Historical Congress.—One feature of the Historical Congress held in London has been the very large number of papers of value read before the legal section. It would be invidious, if it were possible, to discriminate between the many contributions. But reference may be made specially to Professor Galante's paper on "Lo Studio moderno del Diritto Ecclesiastico"; Professor Holdsworth on the Influence of Coke on the Common Law; Professor Esmein's paper on the maxim *Princeps legibus solutus*, as applied in old French constitutional law; Professor Scheurer's paper on the Dead as *Rechtssubjekte*; Professor von Gierke's paper on the History of the Majority Principle; Professor Goudy's paper on the origin of the brocards, *Actio personalis moritur cum persona*, and *Cujus solum ejus usque ad cælum*. In some of these papers was original work of great value, and the standard to which all conformed was remarkably high.

Laws of Barbados.—The Laws of Barbados revised and consolidated by the laws officers of the Colony, care of Aubrey Goodman, K.C., A.-G., and C. P. Clarke, LL.B., K.C., S.-G., were completed in 1912 in four bound volumes containing an interesting historic preface of the successive revisions of the Colony's laws. These law officers were appointed as Commissioners to revise and consolidate the laws of the Colony by the (Barbados) Statute

Law (New Edition) Act of 1909. The detailed procedure set out in this Act has been followed by the Commissioners.¹ These volumes will greatly facilitate all legal business relating to Barbados both in the United Kingdom and in the West Indies.

The Ibo-speaking Peoples of Nigeria.—Mr. Northcote Thomas, the anthropologist to the Colonial Office, who was lately telling us about the laws and customs of the Edo-speaking peoples of Nigeria, has been pursuing his researches among the Ibo-speaking peoples of the same country, and has given us the result in three small illustrated volumes, containing much that is curious and instructive on the subjects of religion, law, marriage, burial, markets, dress, arts, and industries. Infanticide is very prevalent—to the extent of seriously thinning the population—owing to superstitions about children born with certain characteristics being “uncanny”—twins especially, which Mr. Thomas thinks may be due to a rude sentiment of eugenics. In marriage we find the same custom among the Ibo peoples as among the Edos of a suitor working out the price of his bride by doing farm labour for the parents, reminding us of the patriarch Jacob serving Laban for Rachel. Evidently beauty is appreciated, for a handsome girl will fetch as much as £40, while an ugly one goes for three goats!

On the subject of debt, native opinion is quite up to the strict rectitude of early Roman law, and requires that a man overburdened with debt should, if he can, sell himself for the benefit of his creditors, and free himself from the load. This quite eclipses—from an ethical point of view—our debtor filing his own petition in bankruptcy.

Murder has some nice refinements unknown to Coke. For example: Did the murdered man and the murderer belong to different towns? Did they belong to different quarters of the same town? Did they belong to different septs of the same quarter or to the same sept? In each the law is different.

A thief is sold as a slave, but his family *may* redeem him. Small children are leniently treated by having pepper put in their eyes and being flogged.

There is a refreshing frankness about the Ibo native doctor. Mr. Thomas inquired as to their procedure when they were called to a sick man. “They told me,” he says, “that they marched up and down, beating their doctor’s staff on the ground, and then declared that they saw an evil spirit. I asked what they really saw. They laughed, and said, ‘Oh, nothing; but it’s a good way of getting money out of a man.’”

Folklore.—Mr. Thomas has added to his general survey a collection of proverbs and narratives, vocabularies, and a grammar. The proverbs—grouped under headings—show great shrewdness. The narratives—most of them—strike one as prosy and rambling; they need, no doubt, the set-off of

¹ Vide “Review of Legislation,” *Journal of Comparative Legislation*, vol. xi. (N.S.) 1910.

native voice and gesture, but every people is entitled to its taste in fiction. Here is one in which we recognise an old favourite :

LITTLE RED RIDING HOOD.

One boy his mother loves him ; but his grandmother loves him more. One day grandmother bought for him cloth and all things he will put on body. Body fell sick for grandmother. His mother bought him things which he will carry, go to grandmother. He goes out on road. He and bush animal meet. It asks him where he is going. He says he is going to his grandmother, take things. Body is not for her good. It asks him where she is. He says she is behind bush where big tree stood. Bush beast went before him. Reaches place where grandmother was. He said to her, "How are you?" She asked who he is. He says, "I am the one they laugh at." She gets up from where she is lying. Opens door. Bush beast comes in and kills grandmother. The one they laugh at comes, finds door open. Says, "Grandmother, how are you?" She doesn't open mouth. He goes inside house. He says, "Are you alive? You lie down like a dead person." Bush beast comes out from side when door opens. Comes to swallow him. He begins to cry. His father was passing and saw that he is crying. He comes in, takes gun and shoots bush beast to save his son.

And here is another :

LION AND RAT

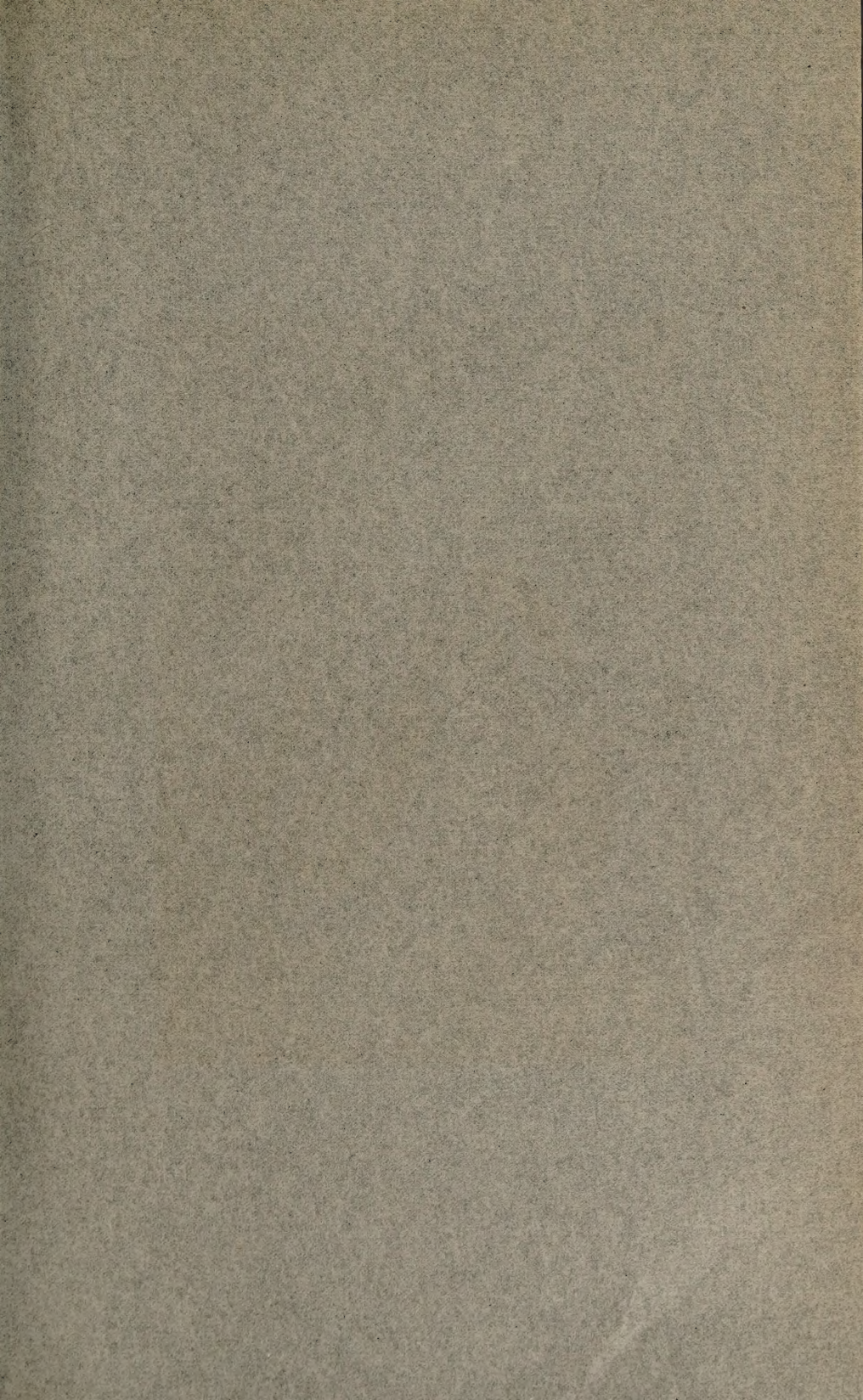
Lion goes hunting. Strength fails him. It rests in shade. It sleeps. Rat climbs up it. It wakes. It takes rat to kill it. A bush animal says, "Please let rat go." He lets rat go. Lion goes other road. Net takes it. It tries to get out. Rat says, "Leave it." It bites through his net. It bites. It says to him go. It escapes. It thanks him, says it has done him service. He says they two will make friends. They live in one house. They are like brothers. Afterwards it kills rat and eats it. *Says he did not like it.*

This tragical *dénouement* is new ; but it no doubt illustrates, like Goldsmith's story of the Giant and the Dwarf in *The Vicar of Wakefield*, another truth in fable—the unwisdom of unequal alliances.



Photo. Elliot & Fry.

The Hon. Elihu Root.



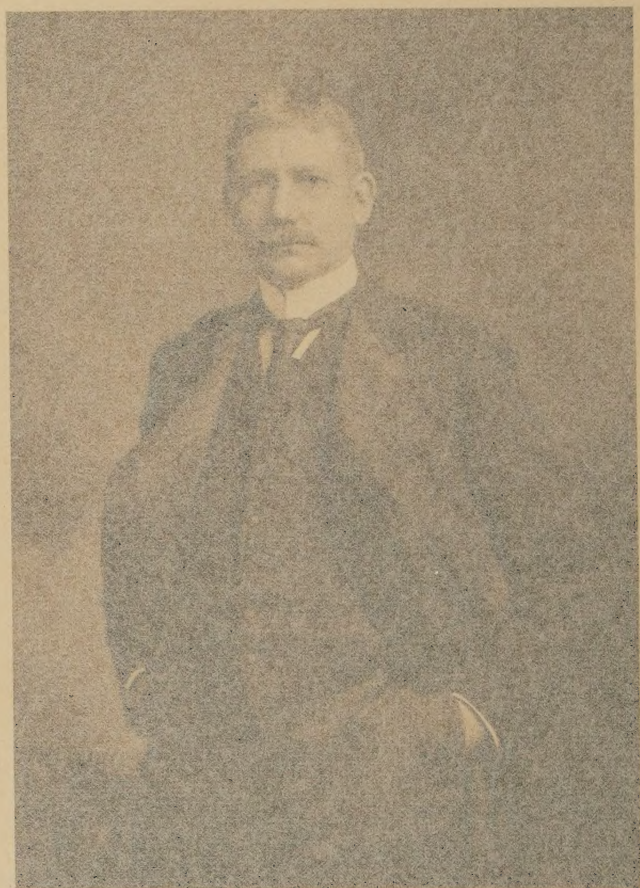


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